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SUBCHAPTER C—FOOD STAMP AND FOOD DISTRIBUTION PROGRAM

EDITORIAL NOTE: Nomenclature changes to subchapter C appear by Amdt. 381, 65 FR 64586, Oct. 30, 2000.

PART 271—GENERAL INFORMATION AND DEFINITIONS

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AUTHORITY: 7 U.S.C. 2011–2036.

§ 271.1 General purpose and scope.

(a) *Purpose of the food stamp program.* The food stamp program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

> Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) *Scope of the regulations.* Part 271 contains general information, definitions, and other material applicable to all parts of this subchapter. Part 272 sets forth policies and procedures governing State agencies which participate in the program. Part 273 describes the eligibility criteria to be applied by State agencies and related processing requirements and standards. Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities. Part 275 sets forth guidelines for monitoring the food stamp program, analyzing the results and formulating corrective action. Part 276 establishes State agency liability and certain Federal sanctions. Part 277 outlines procedures for payment of administrative costs of State agencies. Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services, and insured financial institutions. Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers, and meal services. Part 280 explains procedures for issuing emergency coupon allotments to certain victims of disasters unable to purchase adequate amounts of food. Part 281 sets forth guidelines for designating Indian tribes as State agencies. Part 282 provides guidelines for initiation, selection, and operation of demonstration, research, and evaluation projects. Part 284 provides for a nutrition assistance program for the Commonwealth of the Northern Mariana Islands (CNMI). Part 285 describes the general terms and conditions under which grant funds are provided to the Commonwealth of Puerto Rico.

[Amdt. 132, 43 FR 47882, Oct. 17, 1982, as amended by Amdt. 216, 47 FR 23461, May 28, 1982; Amdt. 248, 48 FR 16832, Apr. 19, 1983; Amdt. 356, 59 FR 29713, June 9, 1994]

§ 271.2 Definitions.

Access device means any card, plate, code, account number, or other means of access that can be used alone, or in conjunction with another access device, to obtain payments, allotments,

benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

Active case means a household which was certified prior to, or during, the sample month and issued food stamp benefits for the sample month.

Active case error rate means an estimate of the proportion of cases with an error in the determination of eligibility or basis of issuance. This estimate will be expressed as a percentage of the completed active quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FNS as having certification rules that are significantly different from standard requirements.

Adequate notice in a periodic reporting system such as monthly reporting or quarterly reporting means a written notice that includes a statement of the action the agency has taken or intends to take; the reason for the intended action; the household's right to request a fair hearing; the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. Depending on the timing of a State's system and the timeliness of report submission by participating households, such notice may be received prior to agency action, at the time reduced benefits are received, or, if benefits are terminated, at the time benefits would have been received if they had not been terminated. In all cases, however, participants will be allowed ten days from the mailing date of the notice to contest the agency action and to have benefits restored to their previous level. If the 10-day period ends on a weekend or a holiday and a request is received the day after the weekend or holiday, the State agency shall consider the request to be timely.

Alien Status Verification Index (ASVI) means the automated database maintained by the Immigration and Naturalization Service which may be accessed by State agencies to verify immigration status.

Allotment means the total value of coupons a household is authorized to receive during each month or other time period.

Application form means: (1) The application form designed or approved by FNS, which is completed by a household member or authorized representative; or

(2) For households consisting solely of public assistance or general assistance recipients, it may also mean the application form used to apply for public assistance or general assistance, including attachments approved by FNS, which is completed by a household member or authorized represen- tative.

Assessment an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an approvable employment and training component.

Authorization document means an intermediary document issued by the State agency and used in an issuance system to authorize a specific benefit amount for a household.

Authorization to participate card (ATP) means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

Beginning month(s) in a Monthly Reporting and Retrospective Budgeting system means either the first month for which the household is certified for food stamps (where the State agency has adopted a one month accounting system) or the first month for which the household is certified for food stamps and the month thereafter (where the State agency has adopted a two month accounting system). Except for beginning months in sequence as described in the preceding sentences, a beginning month cannot be any month which immediately follows a month in which a household is certified. The month following the month of termination resulting from a one-month temporary change in household circumstances shall not be considered a beginning month.

Budget month in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month from which the State agency uses income and other circumstances of the household to calculate the household's food stamp allotment to be provided for the corresponding issuance month.

Bulk storage point means an office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the security and storage of food coupons.

Communal dining facility means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

Coupon means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977, as amended, for the purchase of eligible food.

Coupon issuer means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

Deficiency means any aspect of a State's program operations determined to be out of compliance with the Food Stamp Act, FNS Regulations, or program requirements as contained in the State agency's manual, the State agency's approved Plan of Operation or other State agency plans.

Department means the U.S. Department of Agriculture.

Direct access system means an issuance system in which benefits are issued directly to the household, without the use of an intermediary document, based on the issuance agent's direct access to information in the household's individual record on the master issuance file, which may be a card document or an on-line computer system.

Drug addiction or alcoholic treatment and rehabilitation program means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Under part B of title XIX of the Public Health Service Act is defined as meeting the criteria which would make it eligible to receive funds, even if it does not actually receive funding under part B of title XIX.

Elderly or disabled member means a member of a household who: (1) Is 60 years of age or older;

(2) Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

(3) Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

(4) Receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93–66;

(5) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act.

(6) Is a veteran with a service-connected or non-service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

(7) Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;

(8) Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

(9) Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under title 38 of the United States Code *and* has a disability considered permanent under section 221(i) of the Social Security Act. ''Entitled'' as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them; or

(10) Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 *and* is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 and is determined to be disabled based upon the criteria used under title XVI of the Social Security Act.

(11) Is a recipient of interim assistance benefits pending the receipt of Supplemented Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or a recipient of disability-based State general assistance benefits *provided* that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

Eligible foods means: (1) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(2) Seeds and plants to grow foods for the personal consumption of eligible households;

(3) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(4) Meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;

(5) Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined in paragraphs (2) through (11) of the definition of ''Elderly or disabled member'' contained in this section;

(6) Meals prepared by and served by a shelter for battered women and children to its eligible residents;

(7) In the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing or shelter, nor firearms, ammunition or other explosives;

(8) In the case of homeless food stamp households, meals prepared for and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency, that feeds homeless persons; and

(9) In the case of homeless food stamp households, meals prepared by a restaurant which contracts with an appropriate State agency to serve meals to homeless persons at concessional (low or reduced) prices.

Employment and training (E&T) component a work experience, work training or job search program, as described in section 6(d)(4)(B)(iv) of the Food Stamp

Act of 1977 (7 U.S.C. 2014(2)(4)(B)) designed to help food stamp recipients move promptly into unsubsidized employment.

Employment and training (E&T) mandatory participant a Food Stamp Program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program.

Employment and training (E&T) program a program operated by each State agency consisting of one or more work, training, education or job search components.

Error for active cases results when a determination is made by a quality control reviewer that a household which received food stamp benefits during the sample month is ineligible or received an incorrect allotment. Thus, errors in active cases involve dollar loss to either the participant or the government. For negative cases, an ''error'' means that the reviewer determines that the decision to deny, suspend, or terminate a household was incorrect.

Exempted for purposes of § 273.7 excluding paragraphs (a) and (b)—this term refers to a work registered person or persons excused by the State, under the conditions in § 273.7(e) from participation in an employment and training program.

Exercises governmental jurisdiction means the active exercise of the legislative, executive or judicial powers of government by an Indian tribal organization.

Federal fiscal year means a period of 12 calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

Firm's practice means the usual manner in which personnel of a firm or store accept food coupons as shown by the actions of the personnel at the time of the investigation.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food Stamp Act means the Food Stamp Act of 1977 (Pub. L. 95–113), including any subsequent amendments thereto.

General assistance (GA) means cash or another form of assistance, excluding in-kind assistance, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients.

Group living arrangement means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of ''Elderly or disabled member'' contained in this section.

Homeless individual means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

(1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

(2) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

(3) A temporary accommodation for not more than 90 days in the residence of another individual; or

(4) A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

Homeless meal provider means:

(1) A public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons; or

(2) A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.

House-to-house trade route means any retail food business operated from a truck, bus, pushcart, or other mobile vehicle.

Identification (ID) card means a card which identifies the bearer as eligible to receive and use food coupons.

Immigration and Naturalization Service (INS) means the Immigration and Naturalization Service, U.S. Department of Justice.

Indian tribe means: (1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or (2) any Indian tribe or Band on a reservation holding a treaty with a State government.

Indian tribal organization (ITO) means: (1) The recognized governing body of any Indian tribe on a reservation; or (2) the tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorizes to operate the Food Stamp Program or a Food Distribution Program on their behalf.

Insured financial institution means a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership.

Issuance month in a Monthly Reporting and Retrospective Budgeting system means the fiscal or calendar month for which the State agency shall issue a food stamp allotment. Issuance is based upon income and circumstances in the corresponding budget month. In prospective budgeting, the budget month and issuance month are the same. In retrospective budgeting, the issuance month follows the budget month and the issuance month shall begin within 32 days after the end of the budget month.

Large project area means those project areas/management units with monthly active caseloads of more than 15,000 households based on the most current information available at the time the large project area review schedule is developed.

Low-income household means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

Management Evaluation (ME) reviews means reviews conducted by States at the project area level to determine if State agencies are administering and operating the Food Stamp Program in accordance with program requirements.

Management unit means an area based on a welfare district, region, or other administrative structure designated by the State agency and approved by FNS to be reviewed for ME review purposes.

Master issuance file means a cumulative file containing the individual records and status of households, and the amount of benefits, if any, each household is authorized to receive.

Meal delivery service means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

Medicaid means medical assistance under title XIX of the Social Security Act, as amended.

Medium project area means those project areas/management units with monthly active caseloads of 2,001 to 15,000 households based on the most current information available at the time the medium project area review schedule is developed.

Minimum benefit means the minimum monthly amount of food stamps that one- and two-person households receive. The amount of the minimum benefit shall be $10.

National performance measure means the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of the national allotments issued for the fiscal year using the most recent issuance data available at the

time the State agency is notified of its performance error rate.

Negative case means any action taken to deny, suspend, or terminate a case.

Negative case error rate means an estimate of the proportion of denied, suspended, or terminated cases where the household was incorrectly denied, suspended, or terminated. This estimate will be expressed as a percentage of completed negative quality control reviews excluding all results from cases processed by SSA personnel or participating in a demonstration project identified by FNS as having certification rules that are significantly different from standard requirements.

Newly work registered food stamp participants work registered at the point of application.

Nonprofit cooperative food purchasing venture means any private nonprofit association of consumers whose members pool their resources to buy food.

Offset year means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

Overissuance means the amount by which coupons issued to a household exceeds the amount it was eligible to receive.

Overpayment error rate means the percentage of the value of all allotments issued in a fiscal year that are either: (1) Issued to households that fail to meet basic program eligibility requirements, or

(2) Overissued to eligible households.

Payment error rate means the sum of the point estimates of two component error rates: an overpayment error rate and an underpayment error rate. Each component error rate is the value of allotments either overissued or underissued expressed as a percentage of all allotments issued to completed active sample cases, excluding those cases processed by SSA personnel or participating in certain demonstration projects designated by FNS.

Placed in an employment and training (E&T) program means a State agency may count a person as ''placed'' in an E&T program when the individual commences a component.

Program means the food stamp program conducted under the Food Stamp Act and regulations.

Project area means the county or similar political subdivision designated by a State as the administrative unit for program operations. Upon prior FNS approval, a city, Indian reservation, welfare district, or any other entity with clearly defined geographic boundaries, or any combination of such entities, may be designated as a project area, or a State as a whole may be designated as a single project area.

Prospective budgeting in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on an estimate of income and circumstances which will exist in that month.

Public assistance (PA) means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-age assistance, Temporary Assistance for Needy Families (TANF), including TANF for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind, or disabled.

Quality control review means a review of a statistically valid sample of active and negative cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to determine the extent to which decisions to deny, suspend, or terminate cases are correct.

Record-for-issuance file means a file which is created monthly from the master issuance file, which shows the amount of benefits each eligible household is to receive for the issuance month, and the amount actually issued to the household.

Regulations means the provisions of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

Reservation means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

Retail food store means:

(1) An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale, on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criterion A) as set forth in §278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criterion B) as set forth in §278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry as set forth in §278.1(b)(1) of this chapter. Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for FSP participation as retail food stores under §278.1(b)(1) of this chapter.

(2) Public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics; public or private nonprofit group living arrangements; public or private nonprofit shelters for battered women and children; public or private nonprofit establishments, approved by an appropriate State or local agency, that feed homeless persons; or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless food stamp households;

(3) Any stores selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible foods;

(4) Any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and

(5) A farmers' market.

Retrospective budgeting in a Monthly Reporting and Retrospective Budgeting system means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month, the ''budget month.''

Review date for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day a certification action was taken to authorize the allotment, whichever is later. The ''review date'' for negative cases, depending on the characteristics of individual State systems, could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the computer system, the date of the notice to the client or the date the negative action becomes effective. For no case is the ''review date'' the day the quality control review is conducted.

Review period means the 12-month period from October 1 of each calendar year through September 30 of the following calendar year.

Sample frame means a list of all units from which a sample is actually selected.

Sample month means the month of the sample frame from which a case is selected (e.g., for all cases selected from a frame consisting of households participating in January, the sample month is January).

Screening an evaluation by the eligibility worker as to whether a person should or should not be referred for participation in an employment and training program. This activity would not be considered an approvable E&T component.

Secretary means the Secretary of the U.S. Department of Agriculture.

Shelter for battered women and children means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

Small project area means those project areas/management units with monthly active caseloads of 2,000 households or fewer based on the most current information available at the time the small project area review schedule is developed.

SSA processed/demonstration case means a case that is participating or has been denied based upon processing by SSA personnel or is participating or has been denied/terminated based upon the rules of a demonstration project with significantly different certification rules (as identified by FNS).

Staple food means those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits; and dairy products. Commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will normally be included in the staple food category of the main ingredient as determined by FNS. Hot foods are not eligible for purchase with food stamps and, therefore, do not qualify as staple foods for the purpose of determining eligibility under § 278.1(b)(1) of this chapter. Accessory food items including, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices shall not be considered staple foods for the purpose of determining eligibility of any firm. However, accessory foods that are offered for sale in authorized retail food stores are eligible food items which may be purchased with food stamp benefits.

State means any one of the fifty States, the District of Columbia, Guam, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act for participation as a State agency.

State agency means: (1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency, and (2) the Indian tribal organization of any Indian tribe determined by the Department to be capable of effectively administering a Food Stamp Program or a Food Distribution Program in accordance with provisions of the Food Stamp Act of 1977.

State Income and Eligibility Verification System (IEVS) means a system of information acquisition and exchange for purposes of income and eligibility verification which meets the requirements of section 1137 of the Social Security Act, generally referred to as the IEVS.

State Wage Information Collection Agency (SWICA) means the State agency administering the State unemployment compensation law, another agency administering a quarterly wage reporting system, or a State agency administering an alternative system which has been determined by the Secretary of Labor, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, to be as effective and timely in providing employment related income and eligibility data as the two just mentioned agencies.

Sub-units means the physical location of an organizational entity within a project area/management unit involved in the operation of the Food Stamp Program, excluding Post Offices.

Supplemental Security Income (SSI) means monthly cash payments made under the authority of: (1) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled; (2) section 1616(a) of the Social Security Act; or (3) section 212(a) of Pub. L. 93–66.

Systematic Alien Verification for Entitlements (SAVE) means the INS program whereby State agencies may verify the validity of documents provided by aliens applying for food stamp benefits by obtaining information from a central data file.

Thrifty food plan means the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a

child 9 through 11 years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.

Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons.

Underissuance means the amount by which the allotment to which the household was entitled exceeds the allotment which the household received.

Underissuance error rate. (See *Underpayment error rate.*)

Underpayment error rate means the ratio of the value of allotments underissued to recipient households to the total value of allotments issued in a fiscal year by a State agency.

Universe means all units for which information is desired.

Variance means the incorrect application of policy and/or a deviation between the information that was used to authorize the sample month issuance and the verified information that should have been used to calculate the sample month issuance.

Wholesale food concern means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §271.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§271.3 Delegations to FNS for administration.

(a) *Delegation.* Within the Department, FNS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FNS, the responsibilities may be carried out by the Administrator or by another official of FNS, or by State agencies with respect to claims against households, as designated.

(b) *Claims settlement.* FNS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the act or this subchapter, and to compromise or deny all or part of any claim.

(c) *Demonstration authority.* FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in part 282.

[Amdt. 132, 43 FR 47882, Oct. 17, 1982]

§271.4 Delegations to State agencies for administration.

(a) *General delegation.* The State agency shall be responsible for the administration of the program within the State, including, but not limited to:

(1) Certification of applicant households;

(2) Issuance, control, and accountability of coupons;

(3) Developing and maintaining complaint procedures;

(4) Developing, conducting, and evaluating training;

(5) Conducting performance reporting reviews;

(6) Keeping records necessary to determine whether the program is being conducted in compliance with these regulations; and

(7) Submitting accurate and timely financial and program reports.

(b) *Claims delegation.* FNS delegates to the State agency, subject to the standards in §273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part

of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982]

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

(a) *Coupons as obligations.* Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, ''Crimes and Criminal Procedure,'' relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) *Penalties.* Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of coupons, ATP cards, or other program access device may subject an individual, partnership, corporation, or other legal entity to prosecution under sections 15 (b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance.

(1) Section 15(b)(1) of the Food Stamp Act reads as follows:

Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons, authorization cards, or access devices in any manner contrary to this Act or the regulations issued pursuant to this Act shall, if such coupons, authorization cards, or access devices are of a value of $5000 or more, be guilty of a felony and shall be fined not more than $250,000 or imprisoned for not more than twenty years, or both, and shall, if such coupons or authorization cards are of a value of $100 or more but less than $5000 or if the item used, transferred, acquired, altered or possessed is an access device that has a value of $100 or more but less than $5000 be guilty of a felony and shall upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, or if the item used, transferred, acquired, altered, or possessed is an access device that has a value of less than $100, shall be guilty of a misdemeanor, and upon the first conviction thereof, shall be fined not more than $1000 or imprisoned for not more than one year or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(2) Section 15(b)(2) of the Food Stamp Act reads as follows:

In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(3) Section 15(c) of the Food Stamp Act reads as follows:

Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $20,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $20,000 or if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(c) *Security for coupons and ATP's.* All individuals, partnerships, corporations, or other legal entities including State agencies and their delegatees (referred to in this paragraph as ''persons'') having custody, care and control of coupons and ATP's shall, at all times, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP's and to avoid any unauthorized use, transfer, acquisition, alteration or possession of coupons and ATP's. These persons shall safeguard coupons and ATP's from theft, embezzlement, loss, damage, or destruction.

(d) *Coupon issuers.* (1) Any coupon issuer or any officer, employee or agent, thereof convicted of failing to provide the monthly reports required in §274.5 or convicted of violating part 274 shall be subject to a fine of not more than $1,000, or imprisoned for not more than 1 year, or both.

(2) Any coupon issuer or any officer, employee or agent, thereof convicted of knowingly providing false information in the reports required under §274.5 shall be subject to a fine of not more than $10,000, or imprisoned not more than 5 years, or both.

(e) *Forfeiture and denial of property rights*—(1) *General.* (i) Any nonfood items, moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to the Act, shall be subject to forfeiture and denial of property rights. Such property is deemed forfeited to the United States Department of Agriculture (USDA) at the time it is either exchanged or offered in exchange.

(ii) These forfeiture and denial of property rights provisions shall apply to property exchanged or offered in exchange during investigations conducted by the Inspector General, USDA, and by other authorized Federal law enforcement agencies.

(iii) These forfeiture and denial of property rights provisions shall not apply to property exchanged or intended to be exchanged during the course of internal investigations by retail firms, during investigations conducted solely by State and local law enforcement agencies and without the participation of an authorized Federal law enforcement agency, or during compliance investigations conducted by the Food and Nutrition Service.

(2) *Custodians and their responsibilities.* (i) The Inspector General, USDA, the Inspector General's designee, and other authorized Federal law enforcement officials shall be custodians of property acquired during investigations.

(ii) Upon receiving property subject to forfeiture the custodian shall:

(A) Place the property in an appropriate location for storage and safekeeping, or

(B) Request that the General Services Administration (GSA) take possession of the property and remove it to an appropriate location for storage and safekeeping.

(iii) The custodian shall store property received at a location in the judicial district where the property was acquired unless good cause exists to store the property elsewhere.

(iv) Custodians shall not dispose of property prior to the fulfillment of the notice requirements set out in paragraph 3, or prior to the conclusion of any related administrative, civil, or criminal proceeding, without reasonable cause. Reasonable cause to dispense with notice requirements might exist, for example, where explosive materials are being stored which may present a danger to persons or property.

(v) Custodians may dispose of any property in accordance with applicable statutes or regulations relative to disposition. The custodian may:

(A) Retain the property for official use;

(B) Donate the property to Federal, State, or local government facilities such as hospitals or to any nonprofit charitable organizations recognized as such under section 501(c)(3) of the Internal Revenue Code; or

(C) Request that GSA take custody of the property and remove it for disposition or sale.

(vi) Proceeds from the sale of forfeited property and any moneys forfeited shall be used to pay all proper

expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, transportation costs, and any recording fees. Moneys remaining after payment of such expenses shall be deposited into the general fund of the United States Treasury.

(3) *Notice requirements.* (i) The custodian shall make reasonable efforts to notify the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture except for the good cause exception if the owner cannot be notified.

(ii) The notice shall:

(A) Include a brief description of the property;

(B) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the opportunity to request an administrative review of the forfeiture;

(C) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the requirements for requesting administrative review of the forfeiture; and

(D) State the title and address of the official to whom a request for administrative review of the forfeiture may be addressed.

(iii) Except as provided in paragraphs (e)(3) (iv) and (v) of this section, notice shall be given within 45 days from the date the United States convicts, acquits, or declines to act against the person who exchanged the property.

(iv) Notice may be delayed if it is determined that such action is likely to endanger the safety of a law enforcement official or compromise another ongoing criminal investigation conducted by OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency.

(v) Notice need not be given to the general public.

(4) *Administrative review.* (i) The actual or apparent owner(s) of or person(s) with possessory interests in the property shall have 30 days from the date of the delivery of the notice of forfeiture to make a request for an administrative review of the forfeiture.

(ii) The request shall be made in writing to the Assistant Inspector General for Investigations, Office of Inspector General, USDA, or to his/her designee, hereinafter referred to as the reviewing official.

(iii) A request for an administrative review of the forfeiture of property shall include the following:

(A) A complete description of the property, including serial numbers, if any;

(B) Proof of the person's property interest in the property; and,

(C) The reason(s) the property should not be forfeited.

(iv) The requestor may, at the time of his/her written request for administrative review, also request an oral hearing of the reasons the property should not be forfeited.

(v) The burden of proof will rest upon the requestor, who shall be required to demonstrate, by a preponderance of the evidence, that the property should not be forfeited.

(vi) Should the administrative determination be in their favor, the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture may request that forfeited items be returned or that compensation be made if the custodian has already disposed of the property.

(vii) The reviewing official shall not remit or mitigate a forfeiture unless the requestor:

(A) Establishes a valid, good faith property interest in the property as owner or otherwise; and

(B) Establishes that the requestor at no time had any knowledge or reason to believe that the property was being or would be used in violation of the law; and

(C) Establishes that the requestor at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crimes.

(viii) The reviewing official may postpone any decision until the conclusion of any related administrative, civil, or criminal proceeding.

(ix) The decision of the reviewing official as to the disposition of the property shall be the final agency determination for purposes of judicial review.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended by Amdt. 221, 47 FR 35168, Aug. 13, 1982; Amdt. 269, 51 FR 10782, Mar. 28, 1986; Amdt. 334, 57 FR 3911, Feb. 3, 1992; 59 FR 51354, Oct. 11, 1994]

§271.6 Complaint procedure.

(a) *State agency responsibility*—(1) *General scope*. The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or disability; such complaints shall be handled in accordance with §272.6. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) *Minimum requirements*. The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on the State agency's disposition of the complaint. The State agency shall make information on the complaint system and how to file a complaint available to participants, potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) *Complaint analysis*. The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with §275.16 of this chapter. The information provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) *Monitoring*. FNS shall monitor State compliance with these requirements through the Performance Reporting System.

(b) *Regional office responsibility*. (1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FNS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: Mid-Atlantic Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, CN 02150, Trenton, NJ 08650.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 77 Forsyth Street SW., suite 112, Atlanta, GA 30303-3427.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 77 West Jackson Blvd., 20th Floor, Chicago, IL 60604-3507.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Commerce Street, suite 5–C–30, Dallas, TX 75242.

(v) For Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street, room 400, San Francisco, CA 94108.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 10 Causeway St., Boston, MA 02222-1069.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1244 Speer Blvd., suite 903, Denver, CO 80204-3581.

(2) Complainants shall be advised of the appropriate State complaint handling and fair hearing procedures. Upon household request, other complaints shall be pursued by the Department rather than the State agency, unless the complaint is one upon which the complainant wishes to request a fair hearing.

[Amdt. 132, 43 FR 47882, Oct. 17, 1978, as amended at 45 FR 71350, Oct. 28, 1980; Amdt. 187, 45 FR 85699, Dec. 30, 1980; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 237, 47 FR 57668, Dec. 28, 1982; Amdt. 250, 48 FR 22130, May 17, 1983; Amdt. 269, 51 FR 10782, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994; 76 FR 27606, May 12, 2011]

§ 271.7 Allotment reduction procedures.

(a) *General purpose.* This section sets forth the procedures to be followed if the monthly food stamp allotments determined in accordance with the provisions of § 273.10 must be reduced, suspended, or cancelled to comply with section 18 of the Food Stamp Act of 1977, as amended. The best available data pertaining to the number of people participating in the program and the amounts of benefits being issued shall be used in deciding whether such action is necessary.

(b) *Nature of reduction action.* Action to comply with section 18 of the Food Stamp Act of 1977, as amended, may be a suspension or cancellation of allotments for one or more months, a reduction in allotment levels for one or more months or a combination of these three actions. If a reduction in allotments is deemed necessary, allotments shall be reduced by reducing maximum food stamp allotments amounts for each household size by the same percentage. This results in all households of a given size having their benefits reduced by the same dollar amount. The dollar reduction would be smallest for one-person households and greatest for the largest households. Since the dollar amount would be the same for all households of the same size, the rate of reduction would be lowest for zero net income households and greatest for the highest net income households. All one- and two-person households affected by a reduction action shall be guaranteed the minimum benefit unless the action is a cancellation of benefits, a suspension of benefits, or a reduction of benefits of 90 percent or more of the total amount of benefits projected to be issued in the affected month.

(c) *Reduction method.* If a reduction in allotments is deemed necessary, the maximum food stamp allotments amounts for all household sizes shall be reduced by a percentage specified by FNS. For example, if it is determined that a 25 per cent reduction in the maximum food stamp allotments amount is to be made, the reduction for all four-person households would be calculated as follows: The maximum food stamp allotments amount for a four-person household ($209 in November 1980) would be reduced by 25% to $157. Then 30 percent of the household's net food stamp income would be deducted from the reduced maximum food stamp allotments amount. For example, 30 per cent of a net food stamp income of $200, $60, would be deducted from the reduced maximum food stamp allotments amount ($157), resulting in a reduced allotment of $97.

(d) *Implementation of allotment reductions*—(1) *Reductions.* (i) If a decision is made to reduce monthly food stamp allotments, FNS shall notify State agencies of the date the reduction is to take effect and by what percentage maximum food stamp allotments amounts are to be reduced.

(ii) Upon receiving notification that a reduction is to be made in an upcoming month's allotment, State agencies shall act immediately to implement the reduction. Such action could differ from State to State depending on the nature of the issuance system in use. Where there are computerized issuance systems, the program used for calculating allotments shall be altered to reflect the appropriate percentage reduction in the maximum food stamp allotments for each household size and the computer program shall be adjusted to allow for the minimum benefit for one-

and two-person households. The computer program shall also be adjusted to provide for the rounding of benefit levels of $1, $3 and $5 to $2, $4 and $6, respectively. FNS will provide State agencies with revised issuance tables reflecting the percentage reductions to be made in the maximum food stamp allotments amounts and reduce maximum food stamp allotments levels. In States where manual issuance is used, State agencies shall reproduce the issuance tables provided by FNS and distribute them to issuance personnel. State agencies shall ensure that the revised issuance tables are distributed to issuance agents and personnel in time to allow benefit reductions during the month ordered by FNS. In an HIR card system State agencies have the option of enacting the reduction in benefits either by changing all HIR cards before issuance activity for the affected month begins or by adjusting allotments at the point of issuance as each household appears at the issuance office.

(2) *Suspensions and cancellations.* (i) If a decision is made to suspend or cancel the distribution of food stamp benefits in a given month, FNS shall notify State agencies of the date the suspension or cancellation is to take effect. In the event of a suspension or cancellation of benefits, the provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled. Upon receiving notification that an upcoming month's issuance is to be suspended or cancelled, State agencies shall take immediate action to effect the suspension or cancellation. This action would involve making necessary computer adjustments, and notifying issuance agents and personnel.

(ii) Upon being notified by FNS that a suspension of benefits is over, State agencies shall act immediately to resume issuing benefits to certified households and shall resume benefit issuance as soon as practicable.

(3) *Affected allotments.* Whenever a reduction of allotments is ordered for a particular month, reduced benefits shall be calculated for all households for the designated month. However, any household with one or two members whose reduced benefits would be less than the minimum benefit shall receive the minimum benefit except as provided in §273.10(e)(2). Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month would not be reduced, suspended, or cancelled even though they are issued during an affected month.

(4) *Notification of eligible households.* Reductions, suspensions and cancellations of allotments shall be considered to be Federal adjustments to allotments. As such, State agencies shall notify households of reductions, suspensions and cancellations of allotments in accordance with the notice provisions of §273.12(e)(1), except that State agencies shall not provide notices of adverse action to households affected by reductions, suspensions or cancellations of allotments.

(5) *Restoration of benefits.* Households whose allotments are reduced or cancelled as a result of the enactment of these procedures are not *entitled* to the restoration of the lost benefits at a future date. However, if there is a surplus of funds as a result of the reduction or cancellation, FNS shall direct State agencies to provide affected households with restored benefits unless the Secretary determines that the amount of surplus funds is too small to make this practicable. The procedures implemented by State agencies for reducing and cancelling benefits shall be designed so that in the event FNS directs the restoration of benefits, such benefits are issued promptly.

(e) *Effects of reductions, suspensions and cancellations on the certification of eligible households.* (1) Except as provided in paragraph (e)(2) of this section, determinations of the eligibility of applicant households shall not be affected by reductions, suspensions or cancellations of allotments. State agencies shall accept and process applications during a month(s) in which a reduction, suspension or cancellation is in effect in accordance with the requirements of part 273. Determinations of eligibility shall also be made according to the provisions of part 273. If an applicant is found to be eligible for benefits and a reduction is in effect,

the amount of benefits shall be calculated by reducing the maximum food stamp allotments amount by the appropriate percentage for the applicant's household size and then deducting 30 percent of the household's net food stamp income from the reduced maximum food stamp allotments amount. If an applicant is found to be eligible for benefits while a suspension or cancellation is in effect, no benefits shall be issued to the applicant until issuance is again authorized by FNS.

(2) *Expedited service.* (i) Households eligible to receive expedited processing who apply for program benefits during months in which reductions or suspensions are in effect, shall have their cases processed in accordance with the expedited processing provisions of § 273.2(i).

(A) Those households that receive expedited service in months in which reductions are in effect and that are determined to be eligible shall be issued allotments that are reduced in accordance with the reduction in effect. These reduced allotments shall be made available to the households within the benefit delivery timeframe specified in § 273.2(i).

(B) Those households that receive expedited service in months in which suspensions are in effect and that are determined to be eligible shall have benefits issued to them within the timeframe specified in § 273.2(i). However, if the suspension is still in effect at the time issuance is to be made, the issuance shall be suspended until the suspension is ended.

(ii) Households eligible to receive expedited processing who apply for Program benefits during months in which cancellations are in effect shall receive expedited service. However, the deadline for completing the processing of such cases shall be five calendar days or the end of the month of application, whichever date is later. All other rules pertaining to expedited service, contained in § 273.2(i), shall be applicable to these cases.

(3) The reduction, suspension or cancellation of allotments in a given month shall have no effect on the certification periods assigned to households. Those participating households whose certification periods expire during a month in which allotments have been reduced, suspended or cancelled shall be recertified according to the provisions of § 273.14. Households found eligible to participate during a month in which allotments have been reduced, suspended or cancelled shall have certification periods assigned in accordance with the provisions of § 273.10.

(f) *Fair hearings.* Any household that has its allotment reduced, suspended or cancelled as a result of an order issued by FNS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

(g) *Issuance services.* State agencies must have issuance services available to serve housholds receiving restored or retroactive benefits for a prior, unaffected month.

(h) *Penalties.* Notwithstanding any other provision of this subchapter, FNS may take one or more of the following actions against a State agency that fails to comply with a directive to reduce, suspend or cancel allotments in a particular month.

(1) If FNS ascertains that a State agency does not plan to comply with a directive to reduce, suspend or cancel allotments for a particular month, a warning will be issued advising the State agency that if it does not comply, FNS may cancel 100 percent of the

Federal share of the State agency's administrative costs for the affected month(s). If, after receiving such a warning, a State agency does not comply with a directive to reduce, suspend or cancel allotments, FNS may cancel 100 percent of the Federal share of the State agency's administrative costs for the affected month(s).

(2) If FNS ascertains after warning a State agency as provided in paragraph (h)(1) of this section, that the State agency does not plan to comply with a directive to reduce, suspend or cancel allotments, a court injunction may be sought to compel compliance.

(3) If a State agency fails to reduce, suspend or cancel allotments as directed, FNS will bill the State agency for all over issuances that result. If a State agency fails to remit the billed amount to FNS within a prescribed period of time the funds will be recovered through offsets against the Federal share of the State agency's administrative costs, or any other means available under law.

[Amdt. 146, 46 FR 1426, Jan. 6, 1981, as amended by Amdt. 207, 47 FR 52333, Nov. 19, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 233, 47 FR 53830, Nov. 30, 1982; Amdt. 269, 51 FR 10782, Mar. 28, 1986; 54 FR 24154, June 6, 1989; 56 FR 63596, Dec. 4, 1991; Amdt. 356, 59 FR 29713, June 9, 1994]

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control no.
271.7 (d)	0584–0064
272.1 (d)	0584–0274
272.1 (f)	0584–0009
	0584–0010
	0584–0015
	0584–0022
	0584–0025
	0584–0034
	0584–0037
	0584–0052
	0584–0053
	0584–0064
	0584–0069
	0584–0074
	0584–0080
	0584–0081
	0584–0083
	0584–0124
	0584–0274
	0584–0285
	0584–0299
	0584–0301
	0584–0303
	0584–0333
	0584–0334
	0584–0336
	0584–0339
272.2 (a), (c), (d), (e), (f)	0584–0083
272.5 (c)	0584–0083
272.3 (a), (b), (c)	0584–0083
272.6 (g), (h)	0584–0025
272.7 (f), (g), (h), (i), (j), (k), (m)	0584–0064
273.1 (f), (g)	0584–0064
273.2 (b), (c), (f), (g), (h), (i), (j), (k)	0584–0064
273.4 (e)	0584–0274
273.5 (b)	0584–0064
273.6 (a), (b), (g)	0584–0064
273.7 (a), (d), (e)	0584–0339
273.7 (c)	0584–0064
	0584–0083
	0584–0339
273.7 (f)	0584–0064
273.7 (m)	0584–0285
273.8 (b), (c), (e), (g), (h), (i)	0584–0064
273.9 (d)	0584–0064
273.10 (a), (c), (e), (f), (g)(1)	0584–0064
273.10 (g)(3)	0584–0124
273.11 (a), (b), (c), (d), (e), (f), (h)	0584–0064
273.11 (g)	0584–0334
273.11 (i) (1)–(4)	0584–0080
	0584–0081
273.11 (i)(5)	0584–0009
	0584–0081
273.11 (i)(6)	0584–0009
	0584–0080
	0584–0081
273.12 (a), (b), (c), (d), (e), (f)	0584–0064
273.13 (a)	0584–0064
273.14 (a), (b), (c)	0584–0064
273.15 (a), (c), (d), (f), (i), (k), (l), (m), (q)	0584–0064
273.16 (a), (b), (d), (e), (f), (g), (h), (i)	0584–0064
273.17 (h)	0584–0301
273.18 (a), (c), (d), (e), (f), (g), (k)	0584–0064
273.18 (h)	0584–0069
273.18 (i)	0584–0053
273.21 (a), (c), (e), (f), (g), (h), (i), (j), (m), (p), (q)	0584–0064
274.1 (c)	0584–0009.
274.3 (d)	0584–0009, 0584–0069, 0584–0080.
274.4 (a)	0584–0080.
274.4 (b)	0584–0009, 0584–0015, 0584–0080, 0584–0081.
274.4 (f)	0584–0009, 0584–0053.
274.6 (a), (b) and (e)	0584–0080, 0584–0081.
274.7 (a)	0584–0009.
274.7 (c)	0584–0022.
274.8 (a)–(c)	0584–0009.
274.8 (e)	0584–0053.
274.9 (a)–(d)	0584–0009.
274.11	0584–0009.
275.2 (a)	0584–0010
	0584–0303
275.4 (a)	0584–0010
	0584–0303
275.4 (b)	0584–0010
275.4 (c)	0584–0034
	0584–0074
	0584–0299
275.5 (a), (b)	0584–0010
275.6 (b)	0584–0010

7 CFR section where requirements are described	Current OMB control no.
275.8 (a)	0584–0010
275.9 (b), (g)	0584–0010
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[50 FR 2660, Jan. 18, 1985, as amended at 54 FR 7002, Feb. 15, 1989; 54 FR 24527, June 7, 1989; 56 FR 55059, Oct. 24, 1991; 67 FR 41603, June 19, 2002]

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

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AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 272 are contained in § 271.8.

§ 272.1 General terms and conditions.

(a) *Coupons do not reduce benefits.* The coupon allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs. No participating State or political subdivision shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a coupon allotment.

(b) *No sales taxes on food stamp purchases.* (1) A State shall not participate in the Food Stamp Program if State or local sales taxes or other taxes or fees, including but not limited to excise taxes, are collected within the State on purchases made with food stamp coupons. ''Purchases made with food coupons'' for purposes of this provision shall refer to purchases of ''eligible foods'' as defined in § 271.2. Where the total value of groceries being bought by the recipient is larger than the amount of coupons being presented by the recipient, only the portion of the sale made in exchange for food stamps must be exempt from taxation in order for a State to satisfy the requirements of this provision. Although a food stamp recipient may use a combination of cash and food stamps in making a food purchase, only the dollar amount represented by the food coupons needs to be exempt from taxation.

(2) State and/or local law shall not permit the imposition of tax on food paid for with coupons. FNS may terminate the issuance of coupons and disallow administrative funds otherwise payable pursuant to part 277 in any State where such taxes are charged. Action to disallow administrative funds shall be taken in accordance with the procedures set forth in § 276.4.

(3) A State or local area which taxes some, but not all, eligible food items

shall ensure that retail food stores in that locale sequence purchases of eligible foods paid for with a combination of coupons and cash so as to not directly or indirectly charge or assign a tax to food stamp recipients on eligible food items purchased with coupons. Prohibited methods include, but are not limited to, the allocation of coupons first to non-taxable eligible items, and the application of cash, rather than coupons, to taxable eligible food.

(c) *Disclosure*. (1) Use or disclosure of information obtained from food stamp applicant or recipient households shall be restricted to:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals, or general assistance programs which are subject to the joint processing requirements in § 273.2(j)(2).

(ii) Persons directly connected with the administration or enforcement of the programs which are required to participate in the State income and eligibility verification system (IEVS) as specified in § 272.8(a)(2), to the extent the food stamp information is useful in establishing or verifying eligibility or benefit amounts under those programs;

(iii) Persons directly connected with the verification of immigration status of aliens applying for food stamp benefits, through the Systematic Alien Verification for Entitlements (SAVE) Program, to the extent the information is necessary to identify the individual for verification purposes.

(iv) Persons directly connected with the administration of the Child Support Program under part D, title IV of the Social Security Act in order to assist in the administration of that program, and employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits under titles II and XVI of the Social Security Act;

(v) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provison of law; and

(vi) Local, State, or Federal law enforcement officials, upon their written request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulation. The written request shall include the identity of the individual requesting the information and his authority to do so, violation being investigated, and the identity of the person on whom the information is requested.

(vii) Local, State or Federal law enforcement officers, upon written request, for the purpose of obtaining the address, social security number, and, if available, photograph of any household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall not require a household to present photographic identification as a condition of eligibility and must accept any document that reasonably establishes the applicant's identity. The State agency shall also provide information regarding a household member, upon the written request of a law enforcement officer acting in his or her official capacity, where such member has information necessary for the apprehension or investigation of another member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall terminate the participation of the member. A request for information absent documentation would not be sufficient to terminate the member's participation. The State agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

(viii) Local educational agencies administering the National School Lunch Program established under the Richard B. Russell National School Lunch Act

or the School Breakfast Program established under the Child Nutrition Act of 1966, for the purpose of directly certifying the eligibility of school-aged children for receipt of free meals under the School Lunch and School Breakfast programs based on their receipt of Supplemental Nutrition Assistance Program benefits.

(2) Recipients of information released under paragraph (c)(1) of this section must adequately protect the information against unauthorized disclosure to persons or for purposes not specified in this section. In addition, information received through the IEVS must be protected from unauthorized disclosure as required by regulations established by the information provider. Information released to the State agency pursuant to section 6103(l) of the Internal Revenue Code of 1954 shall be subject to the safeguards established by the Secretary of the Treasury in section 6103(l) of the Internal Revenue Code and implemented by the Internal Revenue Service in its publication, *Tax Information and Security Guidelines*.

(3) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(d) *Information available to the public.* (1) Federal regulations, Federal procedures embodied in FNS notices and policy memos, State Plans of Operation, and corrective action plans shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FNS regional and national offices. State agency handbooks shall be available for examination upon request at each local certification office within each project area as well as at the State agency headquarters and FNS Regional offices. State agencies, at their option, may require other offices within the State to maintain a copy of Federal regulations.

(2) Copies of regulations, plans of operation, State manuals, State corrective action plans, and Federal procedures may be obtained from FNS in accordance with part 295 of this chapter.

(e) *Records and reports.* Each State agency shall keep such records and submit such reports and other information as required by FNS.

(f) *Retention of records.* Each State agency shall retain all Program records in an orderly fashion for audit and review purposes for no less than 3 years from the month of origin of each record. In addition:

(1) The State agency shall retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal government have been liquidated. Administrative closure means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include, but are not limited to, claims and documentation of lost benefits.

(2) Case records relating to intentional Program violation disqualifications and related notices to the household shall be retained indefinitely until the State agency obtains reliable information that the record subject has died or until FNS advises via the disqualified recipient database system edit report that all records associated with a particular individual, including the disqualified recipient database record, may be permanently removed from the database because of the individual's 80th birthday.

(3) Disqualification records submitted to the disqualified recipient database must be purged by the State agency that submitted them when the supporting documents are no longer accurate, relevant, or complete. The State agency shall follow a prescribed records management program to meet this requirement. Information about this program shall be available for FNS review.

(g) *Implementation.* The implementation schedule for any amendment to

the regulations shall be specified in the amendment.

(1) *Amendment 132.* Program changes required by Amendment 132 to the food stamp regulations shall be implemented as follows:

(i) State agencies shall eliminate the purchase requirement for all households on or before January 1, 1979. The State agency shall designate the month the purchase requirement is to be eliminated. If the month designated is other than January 1979, the State agency shall obtain prior approval of FNS. FNS shall approve the designation of months prior to January 1979, if the State agency demonstrates that an accounting procedure for the new issuance system will be in place. The submission dates for the forms FNS–250 and FNS–256, stipulated in § 274.8(a), shall be effective with the reports for the first month of issuance without a purchase requirement. For example, if EPR is implemented in January, the FNS–250 and FNS–256 for January would be due by March 17, 1979. The FNS–259 shall be submitted in accordance with § 274.8(a)(3) starting with the quarter beginning January 1979.

(ii) State agencies may implement all eligibility rules contained in part 273 and all issuance rules contained in part 274 at the same time the purchase requirement is eliminated, but in no case shall eligibility and issuance rules be implemented prior to elimination of the purchase requirement. State agencies may also implement portions of part 273 and part 274 separately after the purchase requirement is eliminated, provided that the eligibility rules setting the income standards, the income deductions and the household allotment calculation are implemented at the same time, and all rules are implemented no later than 3 months after the purchase requirement is eliminated. However, if a State agency implements EPR after December 1, 1978, it shall implement the certification and other issuance regulations for all new applications and recertifications no later than March 1, 1979.

(iii) State agencies shall have up to 4 months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during this time will be converted to the new program at recertification. Remaining households shall be converted by a desk review during that 4-month period. The new income definition, deductions, and allotment calculation shall be completed for all households which are converted through a desk review. To the extent that the case file and other information available to the State agency permit, other eligibility criteria, such as work registration, resources, tax dependency, and alien status, shall be considered during the desk review. Otherwise, nonincome eligibility factors shall be deferred until the household's scheduled recertification. In no event shall a household's certification period be extended as a result of the desk review. Until recertified or converted by a desk review, a household shall continue to receive the bonus portion of the allotment, calculated in accordance with the income, deduction, and basis of issuance provisons of the Food Stamp Act of 1964. During the case file conversion period, some households may be participating on the basis of the old program rules and some on the new rules. Claims against households and restoration of benefits shall not be assessed provided that whichever program rules are in use for a particular case are correctly applied during the conversion period. However, errors caused by miscalculations based on the old or new program rules which result in an entitlement to restoration of lost benefits or an overissuance shall be assessed in accordance with §§ 273.17 and 273.18 of these regulations. The procedures for calculating lost benefits or overissuances as specified in §§ 273.17 and 273.18 shall be applied to any case found to be in error after the implementation of these procedures, even though the action which caused the error may have occurred prior to the date of implementation. Notwithstanding anything to the contrary in the preceding provisions of this paragraph, State agencies shall have up to four months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during

this time shall be converted to the new Program at recertification. However, if the State agency elects to schedule a desk review for these households earlier in the four-month period, conversion shall take place after the desk review. Further, State agencies may elect to do a point-in-time computer conversion in lieu of individual desk reviews. Such a computer conversion must cover entire categories of households, such as public assistance households, all households in a particular project area, all households currently in the computer files, etc., and the State agency may not elect to postpone the conversion of certain cases until recertification.

(iv) State agencies shall implement § 273.17 on the restoration of lost benefits on or before March 1, 1979. State agencies are encouraged to implement restoration of lost benefits concurrent with the elimination of the purchase requirement, especially as they relate to households which are entitled to lost benefits but which have been unable to receive them because the households are currently ineligible. State agencies shall notify currently ineligible households of the availability of their lost benefits by using one of the following procedures:

(A) State agencies which can readily identify the ineligible households which are entitled to lost benefits shall notify these households and restore the lost benefits within 4 months of the date restoration of lost benefits is implemented.

(B) Other State agencies shall issue a one-time-only press release notifying ineligible households that benefits can be restored. The press release shall advise households to contact the local food stamp office for more information. In addition, State agencies issuing the press release shall request the assistance of local Community Action Programs, general assistance agencies, legal services programs funded by the Legal Services Corporation, State employment service and unemployment compensation offices and other State and Federal governmental agencies providing services to low-income households, such as the Social Security Administration or the Community Services Administration. FNS shall provide the State agency with copies of the letter to be used to request assistance from outreach organizations and governmental agencies, and the fliers and posters which will be distributed upon request to such organizations and agencies. The language of the request for assistance, the notice to households and the poster is contained in the appendix to this rulemaking. State agencies shall mail the request for assistance and display posters in all local agency food stamp certification and issuance offices and welfare offices within 30 days of receipt from FNS. In project areas subject to the bilingual requirements of § 272.4(c), State agencies shall provide translations of the posters and fliers. Upon request, FNS shall provide Spanish posters and fliers. FNS shall reimburse State agencies for all costs of providing translations of the posters and fliers in languages other than Spanish. The State agency shall display the posters in its offices for six months. Households whose entitlement to benefits has been clearly established may apply for restoration of lost benefits under this paragraph for an indefinite period. Households whose entitlement to restoration of lost benefits was established more than three years prior to application for retroactive benefits under this paragraph shall be permitted to document entitlement if entitlement cannot be verified from State agency records. Such households shall sign an affidavit under penalty of perjury explaining their entitlement. In lieu of the requirements of this paragraph, State agencies may elect to provide notice pursuant to paragraph (g)(1)(iv)(A) of this section, in any or all project areas within the State.

(v) State agencies shall assume the authority to settle or adjust recipient claims delegated under § 271.4(b) on or before July 1, 1979.

(vi) State agencies without a currently approved utility standard required in § 273.9(d)(5) shall develop and implement an FNS approved utility standard on or before October 1, 1979. The State agency shall notify households certified at the time the utility

standard is implemented of the availability of the standard and the conditions for its use in lieu of actual expenses. Households qualified to use the standard and which elect to do so shall have the standard applied as any other change in circumstances. Otherwise, actual utility expenses shall continue to be used for households qualified for the standard until their next recertification.

(vii) State agencies shall advise FNS of their determination of the need for bilingual services as required by §272.4(c) on or before December 1, 1978. If the State agency cannot determine, based on available information sources, whether or not bilingual services are required in particular project areas, it shall so advise FNS on or before December 1, 1978. The State agency shall then develop procedures to record the number of non-English-speaking low-income households which make contact with its offices in these project areas as required by §272.4(c)(6). These procedures shall be implemented on or before March 1, 1979, and shall continue for 6 months. The State agency shall submit to FNS its determination(s) of the need for bilingual services not later than 60 days following the end of the 6-month period. Bilingual outreach materials shall be available for distribution within 90 days of the State agency's determination that such materials are required. When the State agency determines that bilingual staff and certification materials are required, it shall also make a determination of whether volunteers or paid staff will be used. When volunteers are to be used, the State agency shall provide the materials and arrange for volunteers within 90 days. Paid staff and materials shall be provided within 180 days.

(viii) Prior to the certification of households under these regulations, State agencies shall implement staff training for the transition as required in §272.4(e)(3), and training for outreach workers, receptionists, and others, as required in §272.4(e)(1) (v) and (vi). Beginning with these training sessions for the transition, State agencies shall implement the requirements for public participation at training sessions, as specified in §272.4(e)(1)(iv). State agencies shall designate a training coordinator and develop and implement the ongoing training program required by §272.4(e) on or before July 1, 1979.

(ix) Elimination of the purchase requirement and the implementation of the basic financial and nonfinancial eligibility criteria and other coupon issuance criteria shall not be extended for any reason. FNS may grant extensions for other provisions contained in these rules, provided that the State agency presents compelling justification for a delay and establishes an acceptable alternative schedule in advance of the implementation deadline. In no event will FNS grant an extension in excess of 120 days from the specified implementation date. In those cases where extensions are granted, the relevant Department regulations under the Food Stamp Act of 1964 shall remain in effect until superseded by implementation of the new rules.

(2) *Amendment 137*. Program changes required by Amendment 137 to the food stamp regulations shall be implemented for all households initially applying for food stamp benefits no later than 90 days following the publication of this amendment.

(3) *Amendment 146*. The procedures contained in Amendment 146 shall be implemented by State agencies in time to be able to issue reduced food stamp allotments or to suspend or cancel allotments within 60 days after the date of publication of this amendment in the FEDERAL REGISTER.

(4) *Amendment 141*. State agencies shall begin planning for and conducting ongoing consultations with the Indian tribal organizations of the reservations within their jurisdiction as soon as possible after the effective date of this amendment. Portions of the State Plan of Operation to be submitted for fiscal year 1980 shall be subject to ITO comment as required by §281.2(a). The funding authority in §281.9 shall apply to budgets beginning with the fourth quarter of fiscal year 1979.

(5) *Amendment 211*. State agencies shall implement the new Social Security Number (SSN) provisions for new applicants no later than February 1, 1983 and convert the current caseload at recertification or when the case is otherwise reviewed, whichever occurs

first. The citizenship provisions must be implemented on or before April 1, 1983. All other provisions shall be implemented at State agency discretion.

(6) *Amendment 149*. Changes to States' Quality Control systems as required by this amendment shall be implemented as follows:

(i) *All* State agencies shall continue conducting modified QC reviews [in accordance with regulations published February 9, 1979 (43 FR 8548)] through August 31, 1979 and submit Form FNS–133 to FNS by September 15.

(ii) State agencies shall implement the requirements in subpart C of part 275 for conducting QC reviews no later than October 1, 1979. A quality control sampling plan (as specified in § 275.11(a) of these regulations) must be submitted by each State to the appropriate FNS Regional Office no later than September 1, 1979 (30 days prior to implementation). This will allow time necessary for approval of the plans prior to the October 1 implementation date.

(iii) State agencies are encouraged to implement QC September 1, if possible. States opting to implement early would not be required to operate *for this month* under an approved sampling plan. These States must, however, submit sampling plans in accordance with paragraph (g)(6)(ii) of this section. The month of September (sampling month) would serve as a test phase. Therefore, data collected for the sample month would not be required to be submitted to FNS or used in determining a State's cumulative allotment error rate.

(iv) Regulations published October 17, 1978 (43 FR 47846) which implement major aspects of the Food Stamp Act of 1977 provide for the conversion of cases via a desk review (§ 272.1(g)(1)(iii)). Desk converted cases would be converted to the new eligibility criteria for income and deductions but may not have been converted to the new criteria for resources, work registration, tax dependency, etc. Therefore, States will have households participating in the program based on some of the eligibility criteria of the 1964 Food Stamp Act. Desk converted cases as provided in § 272.1(g)(1)(iii) and cases which should have been converted via desk review (some cases may not undergo the conversion process as required), shall be subject to standard QC review procedures. When the QC reviewer detects a variance in one of these cases which results from an element of eligibility which was not converted and was not required to have been converted, the reviewer shall disregard the variance. When the reviewer detects a variance in a case when an element of eligibility was, or should have been converted, the reviewer shall handle the variance like any other QC variance as identified in § 275.12 of these regulations. It is possible that desk converted cases may continue to show up in QC samples through February 1980.

(v) State agencies shall submit reports of QC review activity (one copy to the appropriate FNS Regional Office and one copy to the Deputy Administrator for Family Nutrition Programs, Washington, DC) as follows:

(A) Each State agency shall report the monthly progress of sample selection and completion on a form provided by FNS. This report shall be submitted to FNS so that it is received no later than 10 days after the end of each month, beginning December 10, 1979. Each report shall reflect sampling and review activity for the previous month.

(B) Each State agency shall report the results of QC review activity on a form provided by FNS. This report shall be submitted to FNS so that it is received no later than 90 days from the end of the reporting period.

(C) Corrections to information on the above reports requested by FNS must be submitted within 10 days of the request.

(7) *Amendment 151*. (i) State agencies shall implement the program changes required by amendment for all new applications and recertifications no later than January 1, 1980. Currently eligible households shall be converted at recertification or when they request conversion to the new deduction system by responding to the notice required in paragraph (g)(7)(iii) of this section or by otherwise requesting recomputation.

(ii) State agencies may but are not required to convert the current caseload to the shelter deduction system

provided for in §273.9(d)(5) through desk reviews or by computer search. State agencies are encouraged to convert eligible households to the new shelter deduction as soon as possible to allow these households to benefit during the winter months.

(iii) Notices explaining the changes and their applicability shall be available at all food stamp certification offices and shall also be mailed or otherwise provided individually to all currently certified households at least once prior to implementation. At a minimum, these notices shall be distributed in the month prior to implementation either with the ATP card or separately but no later than the 15th of the month. The notice shall advise the household of the availability of the new deductions and the procedures for reporting medical and shelter expenses. If the State agency can identify those households to which this amendment would apply, only these households need to receive the notice.

(iv) Fliers advising of the changes contained in this amendment shall be made available to public and general assistance offices, local Social Security offices, and any interested organizations, particularly those dealing with the elderly or disabled or those places where the elderly or disabled congregate, such as housing units. Also, posters explaining the changes shall be displayed in food stamp certification offices and shall be made available to public and general assistance offices, local Social Security offices and any other interested groups. State agencies shall notify all organizations on its outreach contact list of the changes and of the availability of posters and fliers. State agencies shall issue press releases to the news media advising of the impending program changes.

(v) For the first two months of implementation, State agencies shall have up to 30 days to process changes in medical and shelter costs reported in conjunction with this amendment. The change shall be effective for the first issuance following that 30-day period with restoration of lost benefits to the point at which the change would normally become effective under §273.12. The State agency may request an extension of processing time of up to 60 days to act on these changes. The State agency shall submit appropriate documentation to FNS for the State or any part of the State for which such an extension is requested. After the first two months the State agency shall act on these changes in accordance with the normal processing standards in §273.12(c). For changes reported during a period of two months following a State agency's implementation of this amendment, verification of shelter and medical expenses required by §273.2(f) must be obtained prior to the issuance of the third normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original level. State agencies are encouraged to complete such verification and, if needed, conduct an interview prior to processing the change. After this initial period, State agencies will verify these expenses in accordance with the normal timeliness standards.

(vi) Medical expenses shall be subject to the same rounding procedures used for shelter expenses in §273.10(e)(1)(ii). This procedure shall be in effect until implementation of amendments to §273.10(e)(1)(ii).

(vii) No household shall be entitled to restoration of lost benefits under this amendment for any period prior to the time the State agency has implemented its provisions. For the initial months after implementation, during which the longer processing time allowed under this amendment is in effect, a household shall be entitled to restoration of lost benefits back to the month the change would have become effective under the normal processing standards in §273.12(c). After this initial period, no household shall be entitled to restoration of lost benefits unless the State agency does not act on reported changes in accordance with the timeliness standards in §273.12(c) or the household is otherwise entitled under the provisions of §273.17.

(viii) Implementation of these program changes falls in the last three months of the October 1979 to March 1980 reporting period for quality control. For the months of January, February and March 1980, all cases in which a household member is either 60

years of age or over, receives SSI, or disability benefits under title II of the Social Security Act will be subject to standard quality control review procedures, except that any varying information regarding medical deductions and/or shelter deductions in excess of the cap found in the review shall be disregarded in determining errors. Such information shall be noted on the Face Sheet of Form FNS–245 under part VII, Discrepancies and Other Information, and reported to the State agency for appropriate action on an individual case basis. Starting with the April-September 1980 reporting period, when the reviewer detects a variance in the medical deduction and/or the shelter deduction in excess of the cap, and these expenses were reported at application, recertification or during the certification period, the reviewer shall handle the variance like any other QC variance as identified in § 275.12 of the Performance Reporting System regulations.

(8) *Amendment 152*. The rounding procedure set forth in § 273.10(e) shall be in effect for new applications and recertifications no later than July 1, 1980. The State agency shall have up to 12 months following the implementation date of final regulations to convert the current caseload to the rounding procedure that is chosen under § 273.10(e)(1)(ii). The State agency shall have a choice of the following three options in converting households that are already participating at the time the new rounding procedure goes into effect:

(i) Convert households at recertification; (ii) convert households by conducting a desk review; or (iii) convert all households, or all households in a certain category, at a point-in-time. For example, the State agency may convert all public assistance households or all households in a project area by computer. Point-in-time mass conversions shall be conducted no later than July 1, 1980. In any case, the State agency shall advise FNS regarding which rounding and caseload conversion procedures are chosen and when the conversion will be completed.

(9) *Amendment 154*. State agencies shall implement the program changes required by Amendment 154 as follows:

(i) State agencies shall begin requiring social security numbers for all new applications and recertifications no later than the first day of the first month which commences 120 days from the date of publication of final rules. Participating households shall be requested to provide or apply for social security numbers (SSN) for appropriate household members at recertification, or at the time of office contact for any other reason. The State agency shall provide advance notification of this requirement and the consequences of noncompliance by sending an individual notice to all participating households and by providing press releases for dissemination through the media. The individual notices may be sent as either a one-time notice prior to implementation and/or with the notices of expiration of a certification period.

(ii) If any affected member(s) of a household does not have his or her SSN readily available at the time of application, recertification, or any office contact, he or she shall follow the procedures for furnishing an SSN in accordance with § 273.6 as amended.

(iii) State agencies shall implement the fraud claims procedures contained in §§ 273.16 and 273.18. Implementation shall be no later than the first of the month following the 120th day from the date of publication of final rules. By implementation the State agency shall also have an approved system for handling claims, including a method for accounting for the fifty percent retention of the value of funds collected from fraud claims. Any collection action on fraud claims after implementation is subject to the fifty percent retention including claims established under the Food Stamp Act of 1964 as amended and under the Food Stamp Act of 1977, as amended. However, only individuals found guilty of fraud through an administrative fraud hearing or through a court of law under regulations promulgating the Food Stamp Act of 1977, as amended, are subject to the recovery provisions in §§ 273.16 and 273.18 retroactive to implementation of fraud claim provisions under the 1977 Act.

(10) *Amendment 207*. State agencies shall implement the changes in the

rules required by Amendment 207 no later than January 1, 1983. Disabled parents who requested and were denied separate household status on or after September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status.

(11) *Amendment 160*. State agencies shall implement the provisions of this amendment as follows:

(i) State agencies shall submit the initial State corrective action plans so they are received by FNS within 90 days of publication of these regulations as required in § 275.22(a) of this chapter. This initial plan shall contain all known deficiencies in the State which meet the criteria set forth in § 275.16(b) of this chapter and shall identify, for each such deficiency, the items required in § 275.17(b) of this chapter. Project areas also shall prepare and submit to the State corrective action plans for all identified deficiencies. These plans shall be submitted within 60 days of identification of a deficiency and shall include any deficiencies known to the project area prior to publication of these regulations for which corrective action has not been completed. Ninety days after publication of these regulations, all provisions of §§ 275.15, 275.16, 275.17, 275.18, 275.19 and 275.22 of this chapter shall be implemented.

(ii) State agencies shall have submitted management evaluation (ME) review schedules within 90 days of publication of these regulations as required by § 275.20 of this chapter. These review schedules shall contain all information required by § 275.20 of this chapter and shall be adhered to unless a change is necessary. If a modification to an ME review schedule is necessary at any time in the review period, the State shall notify the appropriate FNS Regional Office of the modification.

(iii) State agencies shall implement ME reviews within 90 days of publication of these regulations, following the provisions of §§ 275.5, 275.6, 275.7, 275.8, and 275.9 of this chapter. Any waiver from the requirements of § 275.7 or § 275.9 must be requested 60 days prior to its implementation as identified in § 275.5(c). Development or submission of requests for a deviation shall not delay implementation of the ME review subsystem past the required implementation date.

(iv) All provisions of these regulations which are not addressed in paragraphs (g)(11) (i) and (ii) of this section shall be implemented within 90 days of publication of these regulations. While this includes the requirements for a Performance Reporting System Coordinator and designation of an organizational entity for effecting corrective action as identified in § 275.2(a) of this chapter, this position and designation may be established on an interim basis; provided that the provisions of § 275.2(a) of this chapter are fully implemented by October 1, 1980. During this interim period States shall ensure that all responsibilities of the coordinator or entity are adhered to.

(12) [Reserved]

(13) *Amendment 162*. Program changes required by Amendment 162 of the Food Stamp Program regulations shall be implemented as follows:

(i) The fee agent system for conducting interviews is currently in use and its continuing use is approved.

(ii) All other rules except paragraph (p) of § 272.8 shall be implemented as soon as practical but no later than 90 days following the date of final rulemaking. A fee agent training plan must be submitted within 45 days of the date of final rulemaking. Paragraph (p) of § 272.8 concerning points and hours shall be implemented following the time standards contained therein.

(14) *Amendment 142*. (i) State agencies shall restore lost benefits to households who had their eligibility or benefit levels adversely affected because Federal energy assistance payments were counted as income and/or resources. Entitlement to restoration of lost benefits shall be retroactive to October 1, 1979 for payments received under CSA's ECAP; to November 27, 1979 for payments received under DHEW's EAP; and to January 7, 1980 for the one-time-only energy assistance payments to SSI households in accordance with Pub. L. 96–126.

(ii) State agencies shall use the following procedures for notifying households of entitlement to restoration of benefits under Amendment 142:

(A) State agencies which can readily identify those SSI households who received the one-time payment and those households who received payments under the Energy Crisis Assistance or Energy Allowance Programs which lost benefits because their energy assistance payment was counted as income and/or resources must notify such households of entitlement to restoration of lost benefits.

(B) State agencies which cannot readily identify households entitled to restoration of lost benefits due to the circumstances described in § 272.1(g)(14)(i) must issue a one-time-only press release to notify households which have participated since October 1, 1979 of possible entitlement to restoration of lost benefits. State agencies may, at their option, use additional means of notification such as posters.

(15) *Amendment 163*. State agencies shall implement the provisions in this amendment no later than July 1, 1980.

(16) *Amendment 174*. State agencies shall implement the program changes required by Amendment *174* as follows:

(i) State agencies shall implement the income/resource disregard provision for Federal, State, and local energy assistance payments (§§ 273.8 and 273.9 of this subchapter) no later than October 1, 1981.

(ii) State agencies shall implement the new maximum resource limit and the exemption of vehicles for the physically disabled (§ 273.12 of this subchapter) no later than October 1, 1981 for all new applicants. State agencies shall convert the current caseload to the new resource limit at the time of recertification, or at any other time the casefile is reviewed prior to recertification.

(iii) State agencies shall implement the student participation provisions of this amendment (§§ 273.1, 273.2, 273.5, 273.7 and 273.11 of this subchapter) no later than October 1, 1981 for all new applicants. Current caseload shall be converted at the time of recertification or any time the casefile is reviewed prior to recertification.

(17) *Amendment 158*. (i) The procedures contained in part 273 regarding SSI food stamp joint application processing shall become effective on August 1, 1980 for all State agencies except that:

(A) In those areas designated as SSI/Elderly Cash-out Demonstration Project Sites or Demonstration Project Comparison Sites, implementation of these provisions will be delayed. In addition, Social Security office service areas which contain either demonstration projects sites or demonstration comparison sites will be temporarily exempted, in their entirety, from implementation of these provisions whether or not their boundaries are coterminous with demonstration project sites and/or demonstration comparison site boundaries. This temporary exemption removes the administrative problem of the same SSA office simultaneously operating under both joint processing and cash-out regulations. The procedures contained in this rulemaking shall become effective for these project areas on the first day of the month following the ninetieth day after the termination of the demonstration project.

(B) State agencies in SSI cash-out States as defined in § 273.20 shall not implement the provisions of this rulemaking. In the event an SSI cash-out State loses that status, the State agency shall implement the provisions of this rulemaking on the first day of the month following the ninetieth day after the Secretary of Health and Human Services determines that the State no longer qualifies for cash-out status.

(ii) State agencies shall distribute fliers advising of the changes contained in this amendment to public and general assistance offices, local Social Security offices, any interested organizations, particularly those dealing with the elderly or disabled, and those places where the elderly or disabled congregate, such as housing units senior citizens centers, and elderly feeding programs. Also, posters explaining the changes shall be displayed in food stamp certification offices and shall be made available to public and general assistance offices, local Social Security offices and any other interested groups. State agencies shall notify all organizations on their outreach contact lists of the changes and of the availability of posters and fliers. State agencies shall issue press releases to the news

media advising of the impending program changes. FNS will supply State agencies with model language describing the changes which State agencies may use in their publications.

(18) *Amendment 168*. The provisions of Amendment 168 shall be effective on the thirtieth day following their publication. Any claims filed against State agencies for incidents that occur after the publication of this amendment shall be filed in accordance with the provisions of this amendment. Any claims filed against State agencies for incidents that occurred prior to the publication of this amendment shall be filed in accordance with the rules in effect at the time they occurred. However, the administrative review procedures contained in this amendment shall be applicable to all claims that are filed after the effective date of this amendment.

(19)–(20) [Reserved]

(21) *Amendment 178*. State agencies shall implement the provisions of §§ 273.8 and 273.9 of this amendment for all new applicants no later than February 1, 1981. States shall convert the current caseload to the new rules at recertification or at the time the case is otherwise reviewed, whichever comes first.

(22) *Amendment 179*. State agencies shall implement those verification procedures mandated in §§ 273.2 and 273.8 no later than the first of the month 120 days following publication of final regulations. State agencies may implement those provisions allowed at State agency option in §§ 273.2 and 273.12, once the options have been approved by FNS and the State certification manuals have been revised to incorporate the options.

(23) *Amendment 171*. (i) All States operating an ATP issuance system shall submit the first Form FNS–46, Food Stamp Reconciliation Report, in accordance with Amendment No. 171, for the month of February 1981. This report shall be submitted to the FNS Regional Office within 90 days from the end of the report month.

(ii) All States shall submit the Form FNS–388, State Coupon Issuance and Particpation Estimates, for February 1981 and each month thereafter. Those States that have not submitted procedures for estimating program participation, shall submit them to the FNS Regional Office on or before February 9, 1981.

(24) *Amendment 186*. The procedures of part 275 regarding SSA/food stamp joint processing and demonstration cases shall become effective on August 1, 1980 for all applicable State agencies. These procedures must be implemented by October 1, 1980.

(25) *Amendment 187*. State agencies shall implement the complaint procedures required by § 271.6(a) no later than 180 days following publication of final regulations.

(26) *Amendment 165*. State welfare agencies and State employment agencies shall implement the provisions of Amendment 165 no later than the first of the month following 120 days from publication of amendment 165 in the FEDERAL REGISTER as follows:

(i) Both agencies shall begin immediately to develop the work registration plan and agreements discussed in § 273.7(c) and (d) of Amendment 165. The plan and agreements must be approved and implemented within the 120 day timeframe established for implementation of all provisions of the final rule.

(ii) The provisions of amendment 165 shall be applied to households at the time of initial application, recertification, or reregistration, beginning no later than the first of the month following 120 days from publication of the amendment.

(27) *Amendment 189*. State agencies shall implement the provisions of Amendment No. 189 no later than July 1, 1982.

(28) *Amendment 156*. State agencies shall implement the program changes required by Amendment 156 within 120 days after publication of these regulations, meeting the submittal deadlines outlined in §§ 272.2 and 272.3.

(29) *Amendment 190*. State agencies shall implement these regulations no later than January 1, 1982. The rules are effective November 9, 1981.

(30) *Amendment 191*. Areas subject to the photo ID card requirement must have issued photo ID cards (or cards annotated to indicate that the card is valid without a photograph, in accordance with § 273.10(g)(4)(ii)(C)) to all participating households, and shall require

presentation of photo ID cards (or the annotated cards) at issuance points as a precondition of issuing coupons to households, no later than the first of the month that is 12 months after the publication of final regulations. Any areas that become subject to the photo ID card requirement at a later date shall also come into full compliance no later than the first of the month that occurs 12 months after FNS notifies the State agency that the area is subject to the requirement.

(31) *Amendment 169*. The provisions of Amendment 169 shall be effective March 30, 1981. These provisions shall apply to the period beginning October 1, 1980, except that the provisions of § 277.4(b)(2) shall apply to the period October 1, 1978 through October 1, 1980. No State shall be subject to sanctions based upon quality control error rates for any period prior to October 1, 1980. No State shall receive enhanced funding based upon quality control data for a period prior to the date upon which its quality control system was in operation.

(32)–(33) [Reserved]

(34) *Amendment 198*. State agencies opting to match earnings data provided by applicants and participants with information maintained by the Social Security Administration shall first execute data exchange agreements with the Social Security Administration. After the effective date of this rule and after execution of this agreement, State agencies may implement wage match provisions at their discretion.

(35) *Amendment 202*. State agencies shall implement the provisions of Amendment No. 202 as follows:

(i) The rules shall be implemented no later than October 1, 1981, including the provisions for a medical deduction, separate dependent care deduction, and uncapped shelter expense deduction for the elderly and disabled in Puerto Rico, Guam, and the Virgin Islands. All households who apply October 1 or later and those households who are recertified October 1, 1981 or later shall be processed in accordance with these provisions. The proration of initial month benefits shall begin no later than October 1, 1981.

(ii) Conversion of the current caseload to the new gross income test and earned income deduction amount shall be completed no later than 90 days from October 1, 1981, or 90 days from the date of implementation approved through waiver requests in accordance with paragraph (g)(35)(vi) of this section.

(iii) Conversion of the current caseload to the new household definition; ineligibility of strikers and boarders; and, in Puerto Rico, Guam, and the Virgin Islands, a medical deduction, separate dependent care deduction, and uncapped excess shelter expense deduction shall be completed at or before recertification. In no event shall the new medical, dependent care, and excess shelter provisions for Guam, Puerto Rico and the Virgin Islands be implemented prior to October 1, 1981.

(iv) Notification to affected households of these changes shall be done, at a minimum, in the same manner required for mass changes in public assistance grants prescribed in § 273.12(e)(2)(ii).

(v) Beginning October 1, 1981, outreach activities engaged in by State agencies shall be ineligible for Federal matching funds.

(vi) FNS will consider requests for waivers to these timeframes, except for the timeframe in paragraph (g)(35)(v) of this section, on a state-by-state basis, if good cause can be established and justified, in writing, for the need for a longer timeframe.

(36) *Amendment 259*. State agencies may implement this Monthly Reporting and Retrospective Budgeting rule at any time, but shall implement this rule no later than January 1, 1984. Prior to January 1, 1984, this rule may be implemented Statewide, in only part of a State (such as in certain project areas), or for only certain reasonable classifications of households (such as for only households receiving Temporary Assistance for Needy Families) so long as the implementation is completed by January 1, 1984. State agencies shall have begun to send monthly reports to households so that they can report their January 1984 circumstances in accordance with § 273.21(h). However, the changes in the interim provisions made by this final

rule need not be implemented on January 1, 1984. The changes made by this final rule shall be implemented no later than May 1, 1984. Unless otherwise specified in § 273.21 of this chapter, all other food stamp regulations shall apply to State agencies and to applying or participating households.

(37) *Amendment 205*. The procedures extending eligibility to otherwise eligible residents of shelters for battered women and children contained in Amendment 205 shall be implemented by State agencies no later than April 1, 1982.

(38)–(39) [Reserved]

(40) *Amendment 213*. All State agencies shall execute the appropriate data exchange agreements and implement the provisions of this amendment not later than January 1, 1983. State agencies may opt to match earnings data with information maintained by the Social Security Administration upon publication of final regulations provided they have executed data exchange agreements with the Social Security Administration. State agencies which are not prohibited by State law from wage matching with agencies administering unemployment compensation may do so upon publication of final regulations, provided they have executed the appropriate data exchange agreements.

(41) State agencies shall implement the provisions of Amendment 215 upon publication.

(42) *Amendment 217*. The regulations concerning the optional workfare program contained in Amendment 217 shall be in effect November 8, 1982. Workfare programs may be implemented after this date provided FNS has approved the workfare plan.

(43) *Amendment 220*. State agencies shall implement Amendment 220 on October 1, 1982.

(44) *Amendment 221*. State agencies shall implement on a case by case basis the provisions of this rule, excluding the provision which revises the application form, beginning the first of the month 30 days from the date of publication. The provision requiring a notice of verification on the application form shall be implemented on or before the first day of the month beginning at least 90 days from the date of publication. If the State agency has not depleted its existing supply of application forms, the State agency may opt to implement this provision by providing an insert to the application form containing the notice of verification.

(45) *Amendment 222*. This amendment shall be implemented by the first day of the month following the 30th day after publication. As of that date prior approval of forms, manuals, instructions, or any other type of operating guidelines will no longer be required and waivers will be granted or denied based on the new criteria contained herein. Additionally, as of that date State agencies shall inform FNS of changes, as they occur, in their organizational outline and agreements with other agencies. The submission requirement for the Budget Projection Statement, Form FNS–366A, as set forth in § 272.2(e) shall become effective on August 15, 1983, for the 1984 Federal fiscal year beginning October 1, 1983 through September 30, 1984.

(46) *Amendment 225*. The State agency shall obtain FNS approval for the exclusion of energy assistance provided under any State or local program, in accordance with the criteria set forth in §§ 273.8(e)(14) and 273.9(c)(11), within six months of the date of publication of the final rule. State or local energy assistance which is not approved during this six month period shall cease to be excluded at the end of the period. The new provisions concerning restoration of lost benefits in § 273.17 (a) and (e) shall be implemented no later than 120 days following publication of the final rule.

(47) *Amendment 227*. (i) In accordance with § 276.2(b)(3) (iii), FNS will hold State agencies strictly liable for losses by issuance agents where reconciliation shows noncompliance with photographic identification (photo ID) card requirements beginning with the fiscal quarter that begins January 1, 1983.

(ii) State agencies shall include provisions establishing the liability to the State agency of an issuing agent for the issuance losses covered in § 274.1(b)(6) in the next contract or agreement between the State agency and the issuing agent that is entered into or renewed after publication of

this rule. Not later than one year following such publication, all contracts or agreements shall contain the required provision establishing the liability. However, failure of State agencies to include this language in contracts will not absolve the State agencies of the liability referred to in paragraph (g)(47)(i) of this section.

(48) *Amendment 228*. FNS will consider requests for waivers to monthly reporting requirements beginning November 5, 1982.

(49) *Amendment 245*. The mail issuance loss rates of 0.75 percent and $2,250 are effective January 1, 1983. The mail issuance loss rate of 0.5 percent and $1,500 are effective October 1, 1983. For the second quarter of fiscal year 1983 only, FNS will look at Statewide loss rates and the loss rates of individual reporting units within the State. Where the loss rate for individual reporting units within the State is over the tolerance in that quarter and the Statewide loss rate is also over tolerance, FNS will assess liability for losses exceeding the tolerance reported for the second quarter of 1983. Where the loss rate for individual reporting units within a State are over tolerance for the second quarter, but the Statewide loss rate is under tolerance, State agencies shall have one additional quarter (the third Fiscal Year 1983 quarter) to bring such individual reporting units' loss rates into compliance with the tolerance levels. Thus for these reporting units, FNS will assess liability beginning with the fourth quarter of fiscal year 1983 and each quarter thereafter for losses which exceed the tolerance levels, regardless of Statewide loss rate. FNS will bill State agencies for losses on a semiannual basis.

(50) *Amendment 230*. State agencies shall implement the provisions of Amendment 230 no later than January 1, 1983.

(51)–(52) [Reserved]

(53) *Amendment 233*. State agencies shall implement these regulations no later than February 1, 1983.

(54) *Amendment 234*. The provisions of Amendment 234 shall apply to those sponsored aliens on behalf of whom the sponsor signed an affidavit of support or similar statement (as a condition of the alien's entry into the United States as a lawful permanent resident) on or after February 1, 1983.

(55) *Amendment 235*. Except for the provisions which simply extend options to State agencies, State agencies shall implement the changes made by Amendment 235 no later than February 1, 1983. Elderly/disabled persons who requested and were denied separate household status or other considerations granted disabled persons on or after September 8, 1982, will be entitled to benefits retroactive to the dates of their applications for separate household status or other special considerations.

(56) [Reserved]

(57) *Amendment 240*. The provisions of Amendment 240 shall be effective on January 11, 1983. The enhanced funding, which the amendment implements, is available to political subdivisions retroactive to October 1, 1982. The enhanced funding is available to a political subdivision for a workfare participant who begins working on or after October 1, 1982.

(58) *Amendment 242*. State agencies shall implement the disqualification penalties for intentional Program violation, and the improved recovery of overpayments provisions contained in Amendment 242 no later than April 1, 1983.

(i) The provision in § 273.11(c) for handling the income and resources of an individual disqualified for intentional Program violation shall apply to any individual disqualified for such a violation since the implementation of the fraud disqualification provisions of the Food Stamp Act of 1977. The disqualification procedures for intentional Program violation in § 273.16 shall apply to any individual alleged to have committed one or more acts of intentional Program violation since the implementation of the fraud disqualification provisions under the Food Stamp Act of 1977. However, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified for acts of intentional Program violation which occur after implementation of this amendment. In addition, the disqualification penalties in § 273.16(b) shall apply only to individuals disqualified

for acts of intentional Program violation which occurred either during a certification period based on an application form containing these penalties or after receipt of written notification from the State agency of these penalties. Recurring acts of intentional Program violation which occur over a period of time prior to and after implementation of this final rule shall not be separated. Only one penalty can be imposed for such recurring violations and the household member shall be disqualified in accordance with the disqualification penalties specified in this amendment. The reporting requirements of § 273.16(i) shall become effective upon implementation, however, the State agency shall have until October 1, 1983, to submit such reports on individuals disqualified under previous regulations implementing the Food Stamp Act of 1977.

(ii) The recovery provisions for claims against households in § 273.18 shall apply to any overissuance caused by an action which occurred after implementation of regulations promulgating the Food Stamp Act of 1977, as amended. And, the procedures for calculating the amount of overissuances as specified in § 273.18(c) shall apply to any month in which an overissuance occurred retroactive to March 1, 1979. However, State agency retention of 50 percent of the value of collected intentional Program violation claims and 25 percent of the value of collected inadvertent household error claims as provided in § 273.18(h) shall apply to any collection action retroactive to January 1, 1982. The State agency shall have the option of reinstating any claim previously suspended, but not terminated, under the recovery provisions of regulations implementing the Food Stamp Act of 1977 and, once reinstated, such claims shall be subject to the recovery provisions contained in this amendment. However, the State agency shall not reinstate any amount of a claim compromised or any claim terminated under previous regulations implementing the Food Stamp Act of 1977, as amended. The submission requirements for the Form FNS–209, Status of Claims Against Households, as set forth in § 273.18(h) shall become effective with the quarter ending March 31, 1983.

(59) *Amendment 243*. (i) State agencies shall implement the provisions contained in § 274.1(d) statewide no later than October 1, 1983. FNS will consider requests for waivers to this timeframe on a State-by-State basis if the State agency establishes good cause through submission of written justification of the need for a longer timeframe and submits a plan that shows when the system will be implemented.

(ii) State agencies shall implement the correction made to § 273.1(a)(1)(iv) retroactive to September 8, 1982.

(iii) The Commonwealth of Puerto Rico shall implement the changes to part 285 on January 1, 1984, as published in the FEDERAL REGISTER for December 21, 1984.

(60) *Amendment 244*. State agencies shall implement the provisions regarding joint food stamp/public assistance case processing at State agency discretion. The provisions regarding certification periods must be implemented at time of application or at recertification no later than July 1, 1983.

(61) [Reserved]

(62) *Amendment 247*. State agencies must implement the provisions relative to noncompliance with other programs no later than April 1, 1985. The provisions relative to disclosure of information must be implemented no later than February 1, 1985.

(63) *Amendment 251*. State agencies shall implement the program changes required by this amendment as follows:

(i) State agencies shall apply the work registration, job search, and voluntary quit provisions of this rule, amending portions of § 273.7, to new applicants no later than January 2, 1985. The provisions shall apply to participating households at recertification or at the time of office contact for any other reason.

(64) *Amendment 252*. (i) The sanction/incentive provisions of § 275.25 were effective October 1, 1982. The previous provisions of § 275.25 shall continue to apply to the review periods prior to October 1982.

(ii) The funding provisions of § 277.4(b)(2) were effective on October 1, 1982, and shall apply to the October 1982, through September 1983, review

period and every review period thereafter.

(iii) The revised funding provisions of § 277.4(b)(7) shall apply to the 6-month review periods October 1, 1981 through March 1982 and April through September 1982.

(65) *Amendment 253*. The provisions of § 274.8(a)(6) (i), (ii), and (iii) shall be implemented the first month beginning on or after the 90th day following publication of this final rule. In that month, the FNS–388 report shall provide the actual second preceding month data. The initial semiannual coupon issuance and NA/PA household and person participation data shall be provided in September 1985 for the month of July 1985. State agencies will cease submission of the FNS–256 report as of July 1985.

(66) *Amendment 254*. State agencies shall implement the provisions of Amendment 254 no later than October 19, 1983.

(67) [Reserved]

(68) *Amendment 260*. (i) The quality control review provisions contained in Amendment 260 are effective starting with the beginning of Fiscal Year 1984, except as provided in the following sentences. All cases sampled for the six months October 1983 through March 1984 shall be disposed of and reported within 95 days of March 31, 1984. Cases sampled for April 1984 and for months thereafter shall be disposed of and reported according to § 275.21. For example, 90 percent of April cases are due within 75 days of April 30, and 100 percent are due within 95 days of that date. The structure of sample frames specified in § 275.11(e) must be implemented no later than the sample month of October 1984.

(ii) Starting with the October 1983 sample month, cases must be determined complete, not complete, or not subject to review according to §§ 275.12(g) and 275.13(e). As of the beginning of Fiscal Year 1984 the sample sizes stated in § 275.11(b) and related sampling plan requirements are effective, and State agencies are required to meet the completion standard stated in § 275.11(d). State agencies currently sampling at the levels provided in § 275.11(b)(1)(iii) must submit to their respective FNS Regional Offices the reliability statement required by § 275.11(a)(2) within 30 days of the publication of this rule, or no later than the second month after publication of this rule begin sampling at the levels specified in § 275.11(b)(1)(ii).

(69) *Amendment 261*. State agencies shall implement this amendment establishing the Alaska urban and rural allotment levels and the new cap for Guam no later than August 1, 1984. Households in rural Alaska which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period after September 8, 1982, during which they lived in rural Alaska and participated in the Food Stamp Program in that area. These retroacive benefits will be provided over a period of time not to exceed one year. The amount provided each month will be the higher of $50 or one-twelfth of the total amount due. Households in Guam which request retroactive benefits by February 1, 1985 will be entitled to retroactive benefits for the period October 1, 1982, through September 30, 1983, during which they lived in Guam, participated in the Food Stamp Program in that area, and were in household sizes two, five, or eight or more.

(70) *Amendment 264*. These rules are effective on May 29, 1986. No later than that date State agencies are required to submit the attachment to their State Plan of Operation specified in § 272.2 and in § 272.8(i), documenting either full implementation of these rules or good faith efforts to implement them. The documentation of full implementation or of good faith efforts shall show either that the State agency is routinely requesting and using, or shall show the dates when it will begin routinely to request the use, information from the various data sources specified in § 272.8(a) according to the frequencies for requests, timeframes and other requirements of § 272.8(e), (f) and (g). Full implementation shall include requests for available information from the Social Security Administration for all recipients for which such information has not been previously requested. The 30-day timeframe specified in § 272.8(g) is effective for applicant households which become recipients as discussed in § 272.8(e)(1) as soon as a

State agency begin receiving information from particular data sources.

(i) A Plan describing good faith efforts shall at a minimum document that the State agency is currently in compliance with wage match criteria as specified in the final rulemaking of November 5, 1982 (47 FR 50180), assure that such compliance will continue at current levels until such time as these provisions are implemented, and provide an implementation schedule that reflects full compliance in the minimum amount of additional time. Requests for delays of implementation beyond May 29, 1986 shall identify the applicable regulation part, the date for implementation, justification for the delay, and the implementation plan.

(ii) The Secretary shall consult with the Secretary of the Department of Health and Human Services and with the Secretary of the Department of Labor prior to the approval of Plans of Operation documenting good faith efforts. In no event shall the Secretary approve a delay of the provisions of individual notification in § 273.2(f)(9) beyond the initial implementation date of any of these new provisions.

(iii) Implementation schedules beyond September 30, 1986 are not approvable, with the following exception: If on April 1, 1985 no SWICA exists in a particular State, the provisions of the rule as they relate to SWICAs shall be effective upon the designation of a SWICA. Implementation of a SWICA after April 1, 1985 shall take place as soon thereafter as possible but in no event later than September 30, 1988. All SWICAs with delayed implementation shall be in operation so that wage information is reported to them starting with the month of October 1988.

(71) *Amendment No. 266*. The provisions contained in Amendment No. 266 shall be implemented by March 6, 1987.

(i) All Fiscal Year 1987 review schedules shall continue in force despite the implementation of these provisions. However, a State agency may, at its option, seek a change in that schedule.

(ii) Waivers shall remain in force until their expiration. If a State agency wishes to cancel a waiver it should contact its Regional Office and negotiate whatever change it needs.

(iii) The first periodic Corrective Action Plan update required by this amendment shall be submitted by May 1, 1987.

(72) *Amendment 267*. State agencies shall implement the eligibility requirements of this rulemaking as they apply to offsetting farm self-employment losses and publicly operated community mental health centers not later than March 27, 1986. State agencies must begin taking applications from residents of publicly operated community mental health centers (as defined in § 271.2) not later than March 27, 1986. FNS field offices may authorize these centers to act as retail food stores on February 25, 1986.

(73) *Amendment 269*. The correction to § 273.7(n)(1)(v) outlined in amendment 269 is effective retroactively to October 3, 1984. State agencies which may have implemented the voluntary quit error prior to receiving FNS notification not to effectuate the change, shall issue lost benefits to affected households, but not prior to November 2, 1984 (the effective date of the October 3, 1984 final rule). State agencies shall implement the revisions to the rules outlined in amendment 269 for all new applicants no later than the first day of the month following June 26, 1986. Any conversion of the current caseload necessitated by this amendment shall be done at recertification or at the time the case is next reviewed, whichever occurs first.

(74) *Amendment 270*. (i) State agencies shall implement the earned income and dependent care deduction amounts and the resource limit provisions of Amendment 270 on May 1, 1986. If, for any reason, a State agency fails to implement these provisions on that date, households shall be provided the lost benefits which they would have received if the State agency had implemented these provisions as required.

(ii) The provisions of § 272.1(b) regarding the prohibition of State or local sales taxes on foods purchased with food stamp coupons shall be implemented on October 1 of the calendar year during which the first regular session of each State's Legislature is convened following enactment of Pub. L. 99–198 (enacted December 23, 1985). A ''regular session'' means a scheduled

session of a State's legislature convened to address the usual range of statutory and budgetary issues. A ''budgetary'' session of a legislature shall be considered a ''regular session'' if State rules allow for statutory issues to be introduced at these ''budgetary'' sessions even if rules governing these special procedures are stringent.

(A) FNS may approve a delay in the above implementation date if a State provides FNS a request documenting that such date would either:

(*1*) Have an adverse and disruptive effect on the administration of the Food Stamp Program in such State; or

(*2*) would provide inadequate time for retail stores to implement required changes in sales tax policy.

(B) FNS has no authority to approve any State implementation schedule with an effective date later than October 1, 1987.

(75) *Amendment 273*. The State agency shall implement this amendment establishing Alaska urban, Rural I, and Rural II allotment levels by April 1, 1986.

(76) *Amendment 274*. (i) The provisions of this amendment at §§271.2, 273.2, 273.5, 273.9, 273.10(d)(6), and 273.21(b) shall be implemented for all new applications and the current caseload no later than August 1, 1986. If, for any reason, a State agency fails to implement these provisions on this date, households shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

(ii) The provisions of this amendment at §273.18 and part 285 shall be implemented June 20, 1986.

(iii) The provisions of this amendment at §273.21(a)(4)(i)(A) and the second sentence in §273.10(f)(7) are effective retroactive to August 31, 1981. Section §273.21(a)(4)(ii)(A) and the first two sentences of §273.21(a)(4)(ii)(B) described in this amendment are retroactive to September 8, 1982. The provisions of this amendment at §§272.3, 273.21(a), 273.21(a)(3), 273.21(a)(4)(i)(B), the third sentence at §273.10(f)(7), and the last two sentences of §273.21(a)(4)(ii)(B) are effective retroactive to December 2, 1983. The provision of this amendment at §276.7(j) is effective retroactive to December 23, 1985.

(77) *Amendment 275*. The program change in §273.2(l) of Amendment 275 shall be effective October 1, 1986.

(78) *Amendment 276*. (i) This rule is effective retroactively to December 23, 1985. Any household that applied and was denied benefits from that date until implementation of this rule is entitled to restored benefits if it:

(A) Was categorically eligible as defined in this rule;

(B) Is otherwise entitled to benefits; and

(C) Requests a review of its case or if the State agency otherwise becomes aware that a review is needed.

Restored benefits for these households shall be made available, if appropriate, in accordance with §273.17 back to the date of the food stamp application or December 23, 1985, whichever is later. The State agency shall implement the changes in this rule immediately upon publication and any eligibility determination or issuance made on or after that date shall be made in accordance with this rule.

(ii) For quality control (QC) purposes only, QC reviewers shall not identify variances resulting solely from either implementation or nonimplementation of this rule in cases with review dates between December 23, 1985 and October 31, 1986, inclusive.

(79) *Amendment 277*. State agencies shall implement the provisions of Amendment 277 on August 22, 1986. If, for any reason, a State agency fails to implement the provisions, affected households shall be entitled to restored benefits but not prior to August 22, 1986.

(80) [Reserved]

(81) *Amendment 279*. (i) For State agencies which elected to implement a $160 dependent care deduction limit for all households prior to October 18, 1986, the dependent care deduction provision of Amendment No. 279 is effective retroactive to May 1, 1986 in accordance with section 638 of Pub. L. 99–500. In such States, for QC purposes only, QC reviewers shall not include in the error determination variances which resulted from early implementation by these States of the deduction limit provided the implementation occurred

during the period beginning May 1, 1986 through October 1986.

(ii) For all other State agencies, the $160 dependent care deduction provision of Amendment No. 279 shall be implemented for elderly and disabled applicant and participating households on December 1, 1986. State agencies shall implement the provision as a mass change in accordance with §273.12(e), except that affected households in Alaska, Hawaii and Guam shall be issued an individual notice which, at a minimum, informs the households of the general nature of the mass change, the effect of the deduction limit on the household's allotment, and the month the change will take effect. If for any reason the State agency fails to implement the provision on the required date, affected households shall be provided restored benefits, back to December 1, 1986. For QC purposes only in such States, QC reviewers shall not include in the error determination variances which resulted solely from a State agency's implementation or nonimplementation of the deduction limit between December 1, 1986 and January 1, 1987.

(82) *Amendment 281*. State agencies shall implement the provisions of this amendment no later than April 1, 1987.

(83) *Amendment 282*. The changes to §273.2(i)(3)(i) contained in Amendment No. 282 are effective January 12, 1987 and shall be implemented no later than February 11, 1987.

(84) *Amendment 285*. (i) The provisions of Amendment No. 285 at §§273.9(d)(6)(i), 273.9(d)(6)(ii), 273.9(d)(6)(v)(B), 273.10(d)(1)(i) and 273.10(d)(6) are retroactively effective to October 1, 1986. The State agency shall implement the provisions immediately upon publication and any eligibility determination made on or after that date shall be made in accordance with this rule. The State agency shall review a case to determine if the household was denied benefits under these amendments whenever the household requests a review or the State agency becomes aware that such a denial may have occurred. Any household that was denied benefits as a result of an eligibility or benefit calculation (e.g., processed change report) made on or after October 1, 1986 is entitled to restored benefits. Restored benefits for these households shall be made available, if approporiate, in accordance with §273.17 back to:

(A) October 1, 1986 or the date of application whichever is later for new applications; or

(B) October 1, 1986 or the first month in which the application of these amendments would have affected the household's benefits, whichever is later, for certified households.

(ii) For quality control (QC) purposes only, a variance resulting solely from either the implementation or non-implementation of this rule shall not be identified between October 1, 1986 and April 1, 1987.

(85) *Amendment No. 286*. (i) The provisions of Amendment No. 286 which permit homeless meal providers to apply for authorization to accept food stamps were effective March 11, 1987.

(ii) All other provisions of this amendment were effective April 1, 1987.

(86) *Amendment No. 287*. The provisions of this amendment are effective April 7, 1987.

(87) *Amendment No. 288*. The removal of the word ''funded'' from the last sentence in §273.11(e)(1), the amendments to the first and fourth sentences in §278.1(e), and the revision of paragraph (a)(2)(iii) in §273.11 are effective February 25, 1986 and shall be implemented not later than March 27, 1986.

(88) *Amendment No. 292*. (i) The effective date of the provisions of this amendment is retroactive to November 6, 1986.

(ii) The actual dates upon which aliens may become eligible under §273.4(a) (8), (9), (10), and (11) are specified in those paragraphs. State agencies must inform their staff of the respective dates as they pertain to the eligibility or ineligibility of applicant aliens.

(89) *Amendment No. 293*. The provisions of Amendment No. 293 are effective retroactively to October 17, 1986 and shall be implemented as follows:

(i) State agencies shall implement the provisions of this amendment for new applicant households which apply for program benefits on or after June 1, 1987.

(ii) State agencies shall convert their affected current caseload to the provisions of this amendment at household request, at recertification, or when the case is next reviewed, whichever occurs first and provide restored benefits, if appropriate, back to the date of application of October 17, 1986, whichever occurred later.

(iii) Any affected household that applied for Program benefits from October 17, 1986 until implementation of this rule and was denied benefits is entitled to restored benefits back to the date of application or October 17, 1986, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that review is needed.

(iv) For quality control (QC) purposes only, QC shall not identify variances resulting solely from either implementation or nonimplementation of the provisions of this amendment for cases with review dates between October 17, 1986 (the date of enactment of Pub. L. 99–498) and August 31, 1987.

(90) *Amendment No. 294.* State agencies shall implement the Title IV-D child support income exclusion provision of Amendment No. 294 at its own option, provided it has procedures in place, at the time of implementation, for applying the provision to all affected households and for calculating and reimbursing FNS as required under the provision. State agencies shall implement the remaining provisions of Amendment No. 294 retroactively to April 1, 1987. State agencies shall provide restored benefits, if appropriate, back to the date of application or April 1, 1987, whichever occurred later. Any affected household that applied for Program benefits from April 1, 1987 until implementation of this rule and was denied benefits is entitled to restored benefits back to the date of application or April 1, 1987, whichever occurred later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed. The provision at 7 CFR 273.17, limiting restored benefits to 12 months, shall not apply to households entitled to resorted benefits under the provisions of *Amendment No. 294.* For QC purposes, implementation variances shall not be identified unless a case meets all four of the following conditions: the case's review date is after August 31, 1987; the State agency certified or recertified the case (or was required to recertify the case) after August 31, 1987; the certification or recertification was effective for the review date (or the required recertification should have been effective for the review date); and in a retrospective budget system, the household's budget month was September 1987 or later or in a prospective budget system, the household's issuance month was September 1987 or later. For the purpose of this amendment, State agencies shall not establish a claim against any household which received overissued benefits resulting solely from retroactive implementation of the JTPA income provision in § 273.9(b)(1)(v).

(91) *Amendment No. 295*—(i) *Automated Federal information exchange systems.* States' QC liability exemption for errors resulting from proper use of a Federal automatic information exchange system is effective beginning with the Fiscal Year 1986 reporting period.

(ii) *FNS timeframes.* The timeframes for notifying States of their payment error rates and payment error rate liabilities, if any, and the timeframe by which FNS must initiate collection action on claims for such liabilities are effective beginning with the Fiscal Year 1986 reporting period.

(92) *Amendment No. 284.* State agencies shall submit their ADP/CIS plans to FNS for approval no later than October 1, 1987. Portions of ADP/CIS plans may be submitted no later than January 1, 1988. Plans must be approvable within 60 days of State agency receipt of FNS comments but no later than March 1, 1988. State agencies must begin to implement provisions contained in their approved plans by October 1, 1988.

(93) *Amendment No. 298.* The provisions of Amendment No. 298 are effective, and shall be implemented, as follows:

(i) The provision in § 271.2 of this amendment which defines ''General assistance'' and the provisions contained

in §273.9(b)(2)(i), §273.9(c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(1)(ii)(C), regarding exclusion of certain PA/GA vendor payments are effective retroactively to April 1, 1987. The provision in §273.9(c)(1)(iv)(B), exclusion of emergency/special PA/GA vendor payments, is also effective retroactive to April 1, 1987, however, this provision reflects current policy and requires no implementation efforts by State agencies. State agencies shall immediately implement the other provisions listed above. Affected households shall be entitled to restored benefits back to the date of application or April 1, 1987, whichever occured later.

(ii) The technical amendment to part 277 is effective September 29, 1987, and does not require implementation efforts by State agencies. The remaining provisions of Amendment No. 298 are effective, and must be implemented, as follows:

(A) Section 271.2, definition of ''Homeless individual,'' effective July 22, 1987. State agencies shall immediately inform caseworkers of the new definition. No other implementation efforts are required to the State agencies.

(B) Section 273.9(c)(1)(ii)(D), the income exclusion of certain PA/GA vendor payments, is effective and shall be implemented for new applicant households which apply for benefits during the period beginning October 20, 1987 and ending September 30, 1989. This provision does not apply to allotments issued to any household for any month beginning before the effective period of the provision. State agencies shall convert their affected current caseload to this provision, if otherwise eligible, at recertification, when the household requests a review of its case, or when the State agency otherwise becomes aware that a review is needed but not prior to October 20, 1987.

(C) Section 272.5, the financial reimbursement for Program informational activities for the homeless, is effective July 22, 1987.

(D) Section 273.1(a)(2)(i)(C), §273.1(a)(2)(i)(D), §273.10(f)(2), the exception to certain household composition requirements, and the rule regarding recertification of households subject to the exception, are effective and must be implemented on October 1, 1987. Households which apply for benefits on or after October 1, 1987 may be granted separate household status under this provision. Current participants which may be eligible for separate household status under this provision, may be granted separate status, but not prior to October 1, 1987, if the household requests separate status and the State agency determines that the household meets the requirements of this provision.

(E) Section 273.2(i), the expansion of expedited service, is effective, and must be implemented, for affected households applying for Program benefits on or after December 1, 1987.

(F) Section 273.9(a)(3), regarding the date of making the annual adjustment to the income standards, is effective with the 1988 annual adjustment. The July 1, 1987 income limits will remain in effect until October 1, 1988.

(G) The first three sentences of §273.9(d)(8)(i), the raising of the shelter deduction limit for the 48 States and DC., Alaska, Hawaii, Guam and Virgin Islands, are effective October 1, 1987. State agencies shall implement the higher deduction limits appearing in the first sentence of §273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin on or after October 1, 1987. State agencies shall implement the lower deduction limits appearing in the second sentence of §273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin before October 1, 1987. The State agency shall implement the higher deduction limits for households whose certification periods begin before October 1, 1987 beginning with the month in which such household is recertified after October 1, 1987.

(H) Section 273.9(d)(7)(i), the change in the standard deduction methodology, is effective October 1, 1987.

(I) The last sentence of §273.9(d)(8)(i), the change in the excess shelter deduction methodology, is effective, October 1, 1988.

(J) Section 273.18(c)(2)(ii), the earned income deduction penalty, is effective on September 5, 1987. State agencies which issue on a calendar month basis, shall apply this provision to allotments

issued for October 1987 and all allotments for subsequent months. State agencies which issue on other than a calendar month basis shall apply the provision to the issuance for the first issuance month beginning after September 5, 1987.

(iii) State agencies must implement the provisions as outlined in paragraph (g)(93)(ii) of this section on the specific dates required for each provision. If, for any reason, the State agency fails to implement the provisions on the required date, affected households, if appropriate, shall be entitled to restored benefits back to the date of application or the effective date of the provision involved, whichever occurred later.

(iv) *Quality control variance exclusion.*

(A) For QC purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of the following provisions in cases with review dates during the periods indicated:

(*1*) Sections 273.9(b)(2)(i), 273.9(c)(1)(ii)(A), 273.9(c)(1)(ii)(B), 273.9(c)(1)(ii)(C) and 273.9(c)(1)(iv)(B), concerning PA/GA vendor payments, from April 1, 1987 to December 31, 1987;

(*2*) Section 271.2, concerning the definition of ''Homeless individual'', from July 22, 1987 to December 31, 1987;

(*3*) Section 273.9(c)(1)(ii)(D), concerning PA/GA vendor payments for certain housing assistance provided on behalf of households residing in temporary housing, from October 20, 1987 to December 31, 1987;

(*4*) Sections 273.1(a)(2)(i) (C) and (D), concerning household composition, from October 1, 1987 to December 31, 1987;

(*5*) Section 273.2(i), concerning entitlement to expedited service, from December 1, 1987 to December 31, 1987;

(*6*) Section 273.9(d)(8)(i), the first three sentences only, concerning the shelter deduction limit, from October 1, 1987 to December 31, 1987.

(B) State agencies may choose to exclude these variances in Federal subsample reviews; State agencies are not required to do so. To exclude the variances, they shall provide FNS with the following information by April 1, 1994: The review number of each affected Federal subsample review, the sample month, the reason and justification for excluding the variance, and the revised finding.

(94) *Amendment No. 299.* The changes to § 273.2(i)(3)(ii) are effective January 12, 1987 and shall be implemented no later than February 11, 1987.

(95) *Amendment No. 268.* The QC arbitration provisions shall be implemented by State agencies on February 22, 1988, for all cases for which the regional case findings or the regional arbitrator's decision are received on or after February 22, 1988.

(96) *Amendment 301.* This rule pertains to the Income and Eligibility Verification System (IEVS). It is effective March 18, 1988, except for paragraphs 272.8(i) (3) and (4) and 272.8(j)(1) which will be effective upon publication in the FEDERAL REGISTER of the approval of the information collection burden by the Office of Management and Budget (OMB).

(97) *Amendment No. 278.* State agencies shall implement the provisions of this amendment no later than October 18, 1988.

(98) *Amendment No. 303.* The income exclusion provision § 273.9(c) of *Amendment No. 303* shall be implemented immediately upon publication of the Amendment as follows:

(i) State agencies must apply the provision of this amendment for any eligibility or benefit calculation made on or after February 1, 1988.

(ii) Affected households which were denied benefits because the household's eligibility or benefit calculation during the second Federal fiscal year quarter of 1988 (but not prior to February 1, 1988) did not include the income exclusion provision of this amendment shall be entitled to restored benefits at the time of recertification, whenever the household requests a review of its case, or when the State agency otherwise becomes aware that a review of a particular case is needed.

(iii) Benefits shall be restored back to February 1, 1988 or the date of the food stamp application, whichever occured later. Restoration shall be made in accordance with § 273.17 except that the twelve-month limit for restoring benefits shall not apply.

(iv) For Quality Control (QC) purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of *Amendment No. 303* for cases with review dates between February 1, 1988 and August 31, 1988. For retrospectively budgeted cases, QC reviewers shall begin identifying variances when September becomes the budget month. Variances shall not be identified in cases where *Amendment No. 303* was not implemented prior to the QC review when the State agency correctly followed the implementation provisions of this section.

(99) [Reserved]

(100) *Amendment 289*.

(i) This rule is effective August 11, 1988.

(ii) State agency Work Plans setting forth proposals for conducting Simplified Application/Standardized Benefit Projects must be postmarked no later than November 9, 1988. Local agency Work Plans must be postmarked no later than December 9, 1988.

(101) *Amendment No. 291*. The provisions of Amendment No. 291 are effective September 19, 1988.

(102) *Amendment No. 307*. The provisions of this amendment are effective immediately and shall be implemented as follows:

(i) No later than October 1, 1988, for all new applicants, and no later than the first recertification on or after October 1, 1988, for the participating caseload, State agencies shall implement the provisions of § 272.2(b) relating to the alien/citizenship statement and notification of verification with INS; the provisions of § 273.1(b) relating to nonhousehold members; the provisions of § 273.2(f)(1)(ii) relating to the mandatory verification of alien status; the provisions of § 273.2(h)(3) relating to delays in application processing; and the provisions of § 272.11(c) relating to the treatment of income and resources of nonhousehold members; and

(ii) Unless a waiver has been approved by FNS by October 1, 1988, State agencies shall implement all other provisions of this rule no later than October 1, 1988. Implementation by October 1, 1988 shall be accomplished either by obtaining FNS approval to a Plan of Operation as required in the rule at § 272.11(e) or by submitting to FNS a substantially approvable Plan of Operation as described in material which FNS Regional Offices provided State agencies on or about September 2, 1988. That material provided points for State agencies to consider relative to requesting waivers. State agencies should contact FNS Regional Offices if they need further guidance on waivers.

(103) *Amendment No. 308*. The quality control changes to § 275.12(d)(2) shall be implemented for the quality control review period beginning October 1, 1988.

(104) *Amendment No. 300*. State agencies shall implement the requirements of this rulemaking no later than May 1, 1989.

(105) *Amendment No. 271*. This rule becomes effective April 1, 1989, and the State agencies shall implement all provisions on that date, with the exception of the following provisions: the new provisions on replacement issuances shall be implemented *by* October 1, 1989; the new liabilities for State agencies using authorization document issuance systems shall be implemented *on* October 1, 1989; the new mail issuance reporting and liability assessments shall be implemented *on* October 1, 1989; State agencies wanting to change their current unit-level of mail issuance loss reporting must submit their initial plans *by* May 15, 1989; the new provision on quality control case reviews shall be implemented for federal Fiscal Year 1990; State agencies shall begin to use the revised Form *FNS–46*, Issuance Reconciliation Report, to report figures for the month of October 1989; and, provisions pertaining to staggered issuance contained in any currently-approved waivers will automatically be cancelled April 1, 1989.

(106) *Amendment No. 310*. (i) The provisions of this amendment which adopt, as final, interim provisions published July 17, 1987 and those which redesignate or otherwise slightly modify the July 17 interim provisions for clarity only are effective retroactively to April 1, 1987. The conforming amendment at § 273.11(e)(7) is effective retroactively to February 25, 1986. The remaining technical amendments contained in this amendment at §§ 273.2(e)(2), 273.7(b)(1)(vii), 273.9(b)(1)(iii), 276.2(d) and 278.1(e) are

effective April 24, 1989. These provisions do not alter or change current policy or procedures under which State agency are operating or do not require special implementation efforts by State agencies.

(ii) The provision in § 273.9(b)(1)(v) which limits application of the provision to on-the-job training programs under section 204(5), Title II, of the Job Training Partnership Act is effective retroactively to April 1, 1987 and shall be implemented as follows:

(A) State agencies shall implement the provision for all new applicant households no later than June 1, 1989. Affected applicant households which applied for Program benefits during the period April 1, 1987 and the date the State agency implemented this change and were denied benefits shall be provided restored benefits, if applicable, back to April 1, 1987 or the date of the food stamp application, whichever occurs later, if the household is otherwise entitled to benefits and requests a review of its case or the State agency otherwise becomes aware that a review is needed.

(B) All other households shall be converted to the provision at household request, at recertification, or when the case is next reviewed, whichever occurs first. Restored benefits shall be provided, if applicable, for such households back to April 1, 1987 or the date of the food stamp application, whichever occurs later.

(C) The provision at 7 CFR 273.17, limiting restored benefits to 12 months, does not apply for households entitled to restored benefits under *Amendment No. 310*.

(107) *Amendment No. 313*. The performance-based funding provisions for Employment and Training programs shall be effective October 1, 1989.

(108) *Amendment No. 314*. (i) The provision of *Amendment No. 314* which adds five sentences to § 273.2(j)(1)(iv) and the provisions which add a new paragraph § 273.2(j)(2)(iii)(B) and amend §§ 273.17 and 273.18 are effective July 7, 1989 and shall be implemented no later than September 1, 1989.

(ii) All remaining provisions of *Amendment No. 314*, which adopt the interim provisions of August 5, 1986 as final without change or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985 (the effective date of the interim rulemaking). These provision do not reflect a change in intended policy and, therefore, do not require special implementation efforts by State agencies.

(109) *Amendment No. 315*. Program changes required by Amendment No. 315 to the food stamp regulations shall be implemented as follows:

(i) The provisions relating to migrant and seasonal farmworkers (7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)) are effective September 1, 1988 for all households applying or certified subsequent to August 31, 1988. Changes affecting currently participating households are to be implemented at recertification or when it is necessary to implement other changes affecting the household.

(ii) State agencies were required to implement the provision of this rule regarding a technical correction concerning energy assistance payments (7 CFR 273.9(c)(11)) on September 19, 1988.

(iii) State agencies were required to implement revised food stamp allotments on October 1, 1988 (7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4)(ii), and 273.12(e)). Revised allotments were implemented as mass changes in accordance with 7 CFR 273.12(e).

(iv) State agencies were required to implement the provision relating to the dependent care deduction, 7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E), and monthly reporting and retrospective budgeting, 7 CFR 273.21(a) and (b), on October 1, 1988. These provisions were immediately effective for all households certified subsequent to September 30, 1988. Changes affecting currently participating households were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. (For example, a change reported by a nonmonthly reporting retrospectively budgeted household was to be implemented in accordance with 7 CFR 273.12.) The Department was not requiring State agencies to conduct a casefile review to implement monthly reporting and retrospective budgeting changes for currently participating households. Monthly reports submitted

by households which became exempt from MRRB as a result of the Hunger Prevention Act, such as non-migrant seasonal farmworkers or the homeless, were to be treated as change reports and processed prospectively in accordance with 7 CFR 273.12(c).

(v) State agencies were required to implement the provisions of this rule concerning the exclusion of advance payment of earned income tax credits, 7 CFR 273.8(c)(1) and 273.9(c)(14), on January 1, 1989. Households applying subsequent to December 31, 1988 should have had this provision applied to them as of their date of application. Changes affecting households participating as of December 31, 1988 were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household.

(vi) All other provisions of this rule, relating to technical corrections concerning the urban Alaska TFP (7 CFR 272.7(c)), Alaska proration (7 CFR 272.7(f)(3)(iii)), and the dependent care deduction (7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C)), are to be implemented August 1, 1989.

(vii) Quality control errors made as a result of this rule's changes to §§ 273.9, 273.10, and 273.21 during the required implementation time frame established by this rulemaking shall be handled in accordance with interim regulations published at 53 *FR* 44171, dated November 2, 1988. Food stamp allotment changes are not covered by the interim regulation because this is a mass change.

(viii) State agencies which failed to implement any of these provisions by the required dates shall provide affected households with the lost benefits they would have received if the State agency had implemented these provisions as required.

(110) *Amendment No. 316*. State welfare agencies shall implement the provisions of *Amendment No. 316* as follows:

(i) The provisions contained in § 274.2(b) of *Amendment No. 316* are effective retroactively to January 1, 1989 and shall be implemented by State welfare agencies no later than January 1, 1990 for all households which newly apply for Program benefits or apply for recertification on or after that date.

(ii) The remaining provisions are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits or apply for recertification on or after that date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first and restored benefits shall be provided, if appropriate, back to July 1, 1989 or the date of the application, whichever is later. Additionally, households which applied for Program benefits between July 1, 1989 and the date the State agency implemented these provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the application, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that a review is needed.

(111) *Amendment No. 296*. The provisions of Amendment 296 are effective July 5, 1989.

(112) *Amendment No. 309*. (i) The State agency shall have until June 18, 1990, to request regional arbitration of regional office case findings which the State received before February 22, 1988.

(ii) The State agency shall have until June 18, 1990, to request national office arbitration of regional arbitration decisions which the State agency received before February 22, 1988.

(113) *Amendment (320)*. (i) The provisions of this rule are effective April 2, 1990.

(ii) The provisions relating to the Expanded Food and Nutrition Education Program (§ 272.5(b)(1)(iv)), the collection of fraud claims § 273.18, the monitoring of claims against households (§ 273.18(k)(5)), adverse action notice on claim demand letters (§ 273.18(d)(3)), notices of fair hearings (§ 273.18(d)(3)), and the results of geographic error prone profiles (§ 275.15(g)) shall be implemented no later than July 2, 1990. The provision relating to fraud detection units (§ 272.4(h)) shall be implemented no later than September 4, 1990. State agencies shall complete the first review of food stamp office hours

(§ 272.4(g)) during Federal Fiscal Year 1990.

(iii) State agencies may submit attachments to their Plans of Operation pertaining to the intercept of unemployment compensation benefits to repay intentional Program violations claims as specified in §§ 272.2 (a) and (d) and 272.12(a) of this amendment as of February 22, 1990.

(114) *Amendment No. 322.* The changes contained in this amendment are effective October 15, 1990 and shall be implemented no later than that date. The changes to 7 CFR 273.11 contained in this amendment will apply only to disqualifications imposed after the effective date of this rulemaking.

(115) *Amendment No. 324.* The quality control changes to § 275.12 that are made by Amendment No. 324 shall be implemented for the quality control review period beginning January 1, 1991.

(116) *Amendment No. 330.* The provisions of Amendment No. 330 are effective and must be implemented on August 1, 1991. Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implemention date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

(117) *Amendment No. 332.* The provision of *Amendment No. 332* regarding the resource exemption for PA and SSI recipients is effective and must be implemented no later than February 1, 1992. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly applied for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

(118) *Amendment No. 321.* (i) The provisions contained in §§ 273.7(d)(1)(ii)(A) and 273.9(c)(5)(i) (A) and (F) of Amendment No. 321, which implement section 404(c) of the Hunger Prevention Act of 1988, are effective and must be implemented retroactively to July 1, 1989.

(ii) The remaining provisions of Amendment No. 321 are effective October 1, 1988 and must be implemented no later than March 1, 1992. State agencies may implement the conciliation procedure provisions contained in § 273.7(g)(1)(ii) immediately upon publication of Amendment No. 321. However, in no case shall the conciliation procedures be implemented any later than March 1, 1992. By implemented, the Department means that the State agency shall begin to use conciliation procedures in all cases where the State agency has determined on or after the above implementation date that an individual has refused or failed to comply with an E&T requirement under § 273.7(f).

(119) *Amendment No. 328.* (i) The requirements for State agencies to begin implementation or corrective action for deficiencies which are the cause for non-entitlement to enhanced funding for the Fiscal Year 1986 review period, and review periods thereafter were effective as of October 1, 1985, pursuant to section 604 of Public Law 100–435.

(ii) The requirements for State agencies to begin the implementation of corrective action for deficiencies which result in underissuances, improper denials or improper terminations of benefits to eligible households where such

errors are caused by State agency rules, practices or procedures were effective July 1, 1989, pursuant to section 320 of Public Law 100–435. The corrective action must address all such deficiencies which occurred on or after July 1, 1989.

(iii) The State agency shall have until December 27, 1991, to implement changes in the development of quality control sampling plans, such that only those State agencies proposing nonproportional integrated, or other alternative sampling plan designs must:

(A) Demonstrate that the alternative design provides payment error rate estimates with equal-or-better predicted precision than would be obtained had the State agency reviewed simple random samples of the sizes specified in § 275.11(b)(1) of the regulations,

(B) Describe all weighting, and estimation procedures if the sample design is non-self-weighted, or uses a sampling technique other than systematic sampling,

(C) Demonstrate that self-weighting is actually achieved in sample designs claimed to be self-weighting.

(iv) The State agency shall have until January 27, 1992, to request regional arbitration of any federally subsampled underissuance cases for which the State agency received FNS regional office QC findings on or after February 22, 1988.

(v) The State agency shall have until January 27, 1992, to request national arbitration of any regional arbitration decisions involving underissuance cases for which the State agency received FNS regional arbitration findings on or after February 22, 1988.

(120) *Amendment No. 335.* The provisions contained in *Amendment No. 335* are effective and shall be implemented as follows:

(i) The provisions contained in §§ 271.2, 271.7, 273.1(e)(1)(iii), 273.2(k)(1)(i)(H), 273.2(m), 273.10, 273.18 and 278.1 of Amendment No. 335 are effective on February 1, 1992 and shall be implemented on that date as follows:

(A) The Guam and Virgin Islands State agencies shall communicate the two new group home provisions (§§ 271.2, 273.1(e)(1)(iii) and 278.1) to group homes in their areas by this date so that they can apply for the appropriate certification and residents can apply for food stamps without delay. All State agencies shall implement the expanded group home provisions for applicants newly applying for program benefits on or after February 1, 1992 for approved group homes.

(B) No special implementation efforts are required with regard to the provisions in §§ 273.2(k)(1)(i)(H) and 273.2(m) about informing SSI applicants about the Food Stamp Program and the availability of an application at the social security office.

(C) State agencies are not required to adjust their computers or train their caseworkers immediately in order to implement the provisions in §§ 271.2, 271.7, 273.10 and 273.18 relative to the minimum benefit for one- and two-person households because the methodology for annually adjusting the minimum benefit will not result in an increase in the minimum benefit for some time. However, State agencies are expected to have the capability of implementing a change in the minimum benefit in a timely manner when such a change in announced and, therefore, shall not wait until an actual change in the minimum benefit to adjust computers and train caseworkers.

(ii) The remaining provisions of Amendment No. 335 are effective February 1, 1992. The provisions which reflect that a joint application is no longer required for SSI applicants §§ 273.2 (c)(1), 273.2(i)(3)(i), and 273.2(k)(1)(i)(D) do not require implementation efforts by State agencies. The remaining provisions (§§ 273.4, 273.9(b) and 273.9(c)) also do not require special implementation efforts by State agencies as the provisions reflect current policy.

(iii) Any variance resulting from implementation of the provisions of this amendment shall be excluded from quality control error analysis for 90 days from the required implementation date which shall be handled in accordance with 7 CFR 275.12(d)(2)(vii).

(121) *Amendment No. 336.* The provisions of Amendment No. 336 are effective and must be implemented as follows:

(i) The provision that gives State agencies the option of using retrospective budgeting for nonmonthly reporting households other than those exempt from monthly reports (7 CFR 273.21(b) introductory text) was effective as of November 28, 1990, the date of enactment of the Leland Act.

(ii) The delegation of the responsibility for design of the monthly report form (§ 273.21(h)(3) and § 273.21(j)(1)(ii) of this chapter) must be implemented by February 1, 1992.

(iii) The remaining provisions are effective January 3, 1992 and must be implemented by July 1, 1992.

(iv) Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from the required implementation dates in accordance with 7 CFR 275.12(d)(2)(vii).

(122) *Amendment No. 337.* The provisions of Amendment No. 337 are effective and must be implemented as follows:

(i) State agencies shall implement the provisions of *Amendment No. 337* on February 1, 1992, except as provided in paragraph (g)(122)(ii) of this section.

(ii) The amendments to revise the introductory text of § 273.2(j) and § 273.2(j)(3) as they relate to categorical eligibility and the amendment adding § 273.2(j)(4) are effective and must be implemented February 1, 1992 for recipients of GA from a State program. They are effective and must be implemented August 1, 1992 for recipients of GA from a local program.

(iii) Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis in accordance with 7 CFR 275.12(d)(2)(vii) for 90 days from the required implementation date. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date, the date of the food stamp application or the date the household was determined categorically eligible in accordance with § 273.2(j)(4), whichever is later.

(iv) The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits back to the required implementation date.

(123) *Amendment No. 338.* The provisions of *Amendment No. 338* are effective and must be implemented on February 1, 1992. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date of February 1, 1992. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If, for any reason, a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of the food stamp application, whichever is later. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

(124) *Amendment No. 325.* The quality control changes to § 275.23 that are made by Amendment No. 325 shall be implemented effective January 24, 1992.

(125) *Amendment No. 345.* The provisions of Amendment No. 345 are effective on April 1, 1992, and shall be implemented as follows:

(i) Currently operating demonstration projects shall submit to FNS for approval a plan no later than June 30, 1992, to satisfy the requirements of this regulation. The plan shall address the areas in which the State EBT demonstration project does not comply with the provisions of this rule and how the State agency plans to bring its system into compliance. The State agency shall submit a schedule of any actions it proposes to take and when they are to be completed. Compliance with the provisions of this final regulation shall occur within two years from the effective date unless approved by FNS to continue operations under the authority of section 17 of the Act (7 U.S.C. 2026) as a demonstration project.

In seeking FNS approval to continue under Section 17 authority, the State agency shall state what research value would be obtained in continuing the demonstration.

(ii) For State agencies that have proposals or planning documents currently under review by the Department, the State agencies and the Department shall establish at what point the State agency is in the planning process and how the State agency will fit into the approval process of these rules. All such State agencies will be expected to comply with the standards of these rules.

(iii) A State agency that wishes to obtain approval for an EBT system shall submit a Planning Advanced Planning Document for FNS approval as prescribed herein.

(126) *Amendment No. 327*. (i) The statutory provision reflected in §275.23(e)(6)(v) of Amendment No. 327 was effective October 1, 1985 pursuant to Public Law 100–435.

(ii) The remaining provisions are effective October 28, 1992.

(127) *Amendment No. 340*. (i) The provisions at §273.7(d)(1)(i)(A) and §273.7(d)(1)(i)(B) are effective retroactive to October 1, 1991.

(ii) The provision at §273.7(c)(4)(viii) is effective and must be implemented by August 15, 1993, the date E&T plans must be submitted to FNS.

(iii) The provision at §273.10(d)(1)(i) is effective January 19, 1993 and must be implemented by March 1, 1993.

(iv) The remaining provisions of Amendment No. 340 are effective and must be implemented retroactively to February 1, 1992.

(v) Any variances resulting from implementation of the provision at §273.10(d)(1)(i) shall be excluded from error analysis for 90 days from the required implementation date in accordance with 7 CFR 273.12(d)(2)(vii).

(128) *Amendment No. 326*. The provisions of this amendment are effective and must be implemented no later than December 1, 1993. Any variance resulting from implementation of the provisions of this amendment shall be excluded from quality control error analysis for 60 days from the required implementation date which shall be handled in accordance with 7 CFR 275.12(d)(2)(vii).

(129) *Amendment No. 349*. The provisions of *Amendment No. 349* are effective, and shall be implemented, as follows:

(i) §273.1(a)(2)(i)(C), §273.1(a)(2)(i)(D) and §273.10(f)(2) are effective as of October 1, 1987; §273.2(i)(1) (iii) and (iv) are effective as of December 1, 1987; the new §273.9(c)(1)(ii)(G) is effective as of April 1, 1987. However, application of §273.9(c)(1)(ii)G) in conjunction with the provisions at §273.9 (c)(1)(ii) (A) through (F) and (c)(5)(i)(F) is effective as of the date the individual provisions at 7 CFR 273.9 (c)(1)(ii) (A) through (F) and (c)(5)(i)(F) became effective. Those dates are: §273.9(c)(1)(ii) (A), (B), and (C), April 1, 1987; §273.9(c)(1)(ii)(D), October 20, 1987; §273.9(c)(1)(ii)(E), September 1, 1988, and §273.9(c)(1)(ii)(F), August 1, 1991. The amendment to the first sentence of §273.9(c)(1)(iv)(B) to include a regulatory reference to 7 CFR 273.9(c)(5)(i)(F) is effective as of August 1, 1991 (the date the individual provision at 7 CFR 273.9(c)(5)(i)(F) became effective), and §273.18(c)(2)(ii) is effective as of September 5, 1987. To the extent that these provisions represent new or different policy from that under which the State agency is currently operating, the State agency shall implement the provisions not later than April 1, 1994 for households newly applying for Program benefits on or after such implementation date. State agencies shall convert their affected current caseload to these provisions (except for §273.18(c)(2)(ii)) at recertification, when the household requests a review of its case, or when the State agency otherwise becomes aware that a review is needed, whichever occurs first. To the extent that the provisions will result in restored benefits for affected households, such benefits shall be provided back to the effective date of the provision or the date of the household's first initial application, whichever occurs later;

(ii) The remaining provisions of *Amendment No. 349* adopt as final, without change, interim provisions published September 29, 1987 and are effective as of the date the corresponding interim provision became effective as established at 7 CFR 272.1(g)(93). These

provisions and the effective dates are: § 271.2, definition of ''Homeless individual,'' July 22, 1987; § 272.5, July 22, 1987; § 273.9(a)(3), October 1, 1988; § 271.2, definition of ''General assistance,'' April 1, 1987; § 273.9(b)(2)(i), April 1, 1987; § 273.9(c)(1) (ii)(A), (ii)(B) and (ii)(C), April 1, 1987; § 273.9(d)(7)(i), October 1, 1987; § 273.9(d)(8)(i), October 1, 1987 (except for the last sentence, which is effective October 1, 1988). The provisions do not change policy or procedures under which State agencies are currently operating and, therefore, do not require specific implementation efforts by State agencies.

(130) *Amendment No. 342*. The provision relating to household election of repayment method for IPV claims at § 273.18(d)(4)(ii) is effective retroactive to November 28, 1990. The provision relating to household election of repayment method for IHE claims at § 273.18(d)(4)(i) is effective December 13, 1991. The provisions for State agency retention rates on claim collections at § 273.18(h)(2) and (i) are effective retroactive to October 1, 1990. The provisions at § 277.18 which reduce the enhanced funding level for ADP is effective October 1, 1991, for costs incurred on that date and thereafter and does not apply to ADP funding approved prior to November 28, 1990.

(131) *Amendment No. 347*. The provisions of this amendment are effective as specified in paragraphs (g)(131)(ii) (A), (B), and (C) of this section. State agencies are not required to do file searches for cases relating to PASS households unless the question on an income exclusion for PASS had been raised with the State agency prior to December 13, 1991.

(i) The provisions at §§ 271.2, 273.1, and 273.11 were effective and had to be implemented no later than February 1, 1992.

(ii) The provision at § 273.9(c)(17) is effective the earlier of:

(A) December 13, 1991, the date of enactment of Pub. L. 102–237;

(B) October 1, 1990, for food stamp households for which the State agency knew, or had notice, that a household member had a PASS; or

(C) Beginning on the date that a fair hearing was requested contesting the denial of an income exclusion for amounts provided for a PASS.

(132) *Amendment No. 316*. The provisions of this final rule that amend 7 CFR 273.2(b)(3), 273.2(c)(5), 273.2(f)(8)(i)(A) and (ii), and paragraph (11) of the ''Elderly or disabled member'' definition in 7 CFR 271.2 are effective as of May 6, 1994. The State agency shall implement the provisions not later than September 5, 1994 for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

(133) *Amendment No. 352*. The provisions of this amendment are effective April 11, 1994.

(134) *Amendment No. 355*. The provisions of Amendment No. 355 are effective and must be implemented on August 1, 1994. Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii) as modified by section 13951(c)(2) of Pub. L. 103–66. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the

required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

(135) *Amendment No. 348.* The provisions of Amendment No. 348 are effective August 5, 1994 and must be implemented for all QC billing actions beginning with Fiscal Year 1986.

(136) *Amendment No. 346.* The provision of Amendment No. 346 regarding an income exclusion for homeless households living in transitional housing is effective and must be implemented no later than September 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

(137) *Amendment No. 350.* The provisions of Amendment No. 350 are effective and must be implemented as follows:

(i) The provision at §273.8(e)(12)(i) of this chapter is effective and must be implemented according to statute retroactive to January 1, 1991.

(ii) The provision at §273.8(e)(12)(ii) of this chapter will be effective and must be implemented on September 1, 1994.

(iii) The provision at §273.21(b) of this chapter against establishing new monthly reporting requirements for households residing on Indian reservations if no monthly reporting system was in place on March 25, 1994 is effective and must be implemented according to statute retroactive to March 25, 1994.

(iv) The provision in §273.2(j) of this chapter concerning categorical eligibility for GA recipients is effective and must be implemented according to statute retroactive to February 1, 1992.

(v) The remaining provisions are effective and must be implemented October 28, 1994.

(138) *Amendment No. 359.* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 275.12(d)(2)(vii) of this chapter. The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. State agencies must notify households eligible for the deduction of the change in medical deduction reporting requirements and the right of the household to be converted to those new procedures immediately. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first.

(139) *Amendment No. 351.* The provisions of Amendment No. 351 to amend 7 CFR 273.7(d) are effective October 1, 1993. State agencies are not required to take any action to implement these provisions.

(140) *Amendment No. 333.* The provisions of Amendment No. 333 are effective and must be implemented as follows:

(i) The provisions relating to aggregated (combined) allotments to households applying after the 15th of the month and mail issuance in rural areas where households experience transportation difficulties in obtaining benefits are effective and must be implemented by statute retroactive to February 1, 1992.

(ii) The provision relating to staggered issuance on Indian reservations

was in place on March 25, 1994, is effective and must be implemented according to statute retroactive to March 25, 1994.

(iii) The remaining provisions are effective and must be implemented September 1, 1995.

(141) *Amendment No. 360*. This provision is effective September 20, 1995, and must be implemented no later than the first day of the first month beginning December 19, 1995.

(142) *Amendment No. 357*. The provisions of Amendment No. 357 are effective and must be implemented as follows:

(i) The provision relating to the increased penalties at 7 CFR 273.16(b) is effective and must be implemented retroactive to September 1, 1994. This includes providing notification of the increased penalties on the application form.

(ii) The remaining provisions are effective and must be implemented October 23, 1995.

(143) *Amendment 367*. The provisions of Amendment 367 must be implemented no later than October 2, 1995 except that State agencies currently participating in the Federal Income Tax Refund Offset Program (FTROP) must implement section 272.2(d)(1)(xii), which relates to the submission of the Plan of Operations, within November 30, 1995.

(144) *Amendment No. (370)*. The provisions of Amendment No. (370) are effective and must be implemented as follows:

(i) Sections 273.5(b)(1), (b)(4), and (b)(9) are effective February 1, 1992. The introductory paragraph of 273.5(b)(6) is effective February 1, 1992. The introductory paragraph of 273.5(b)(10) is effective February 1, 1992. Sections 273.5(b)(11)(ii), (b)(11)(iii), and (b)(11)(iv) are effective February 1, 1992.

(ii) Sections 273.5(b)(6)(i) and (b)(6)(ii) and sections 273.5(b)(10)(i) and (b)(10)(ii) and the remaining provisions of this regulation are effective November 1, 1995 and shall be implemented no later than February 1, 1996.

(iii) The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency shall provide restored benefits back to the effective date.

(iv) Any variance resulting from implementation of a provision in this rule shall be excluded from error analysis for 120 days from the required implementation date of that provision.

(145) *Amendment No. 369*. The provisions of *Amendment No. 369* are effective May 31, 1996. State agencies must implement no later than November 27, 1996. The provisions of this amendment are applicable for determinations of intentional failure to comply made on or after the effective date of the amendment.

(146) *Amendment No. 368*. The provisions of Amendment No. 368 are effective on July 29, 1996.

(147) *Amendment No. 364*. Except for the provisions of § 273.14(b)(2), the provisions of *Amendment No. 364* are effective November 18, 1996 and must be implemented no later than May 1, 1997. The effective date and implementation date of the provisions of § 273.14(b)(2) will be announced in a document in the FEDERAL REGISTER. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current caseload shall be converted to these provisions following implementation at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to required implementation date or the date the State agency implemented the provision prior to the required implementation date. If for any reason a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with

§275.12(d)(2)(vii) of this chapter and 7 U.S.C. 2025(c)(3)(A).

(148) *Amendment No. 362.* The provision of section 13921 of Public Law 103–66 establishing a child support deduction was effective September 1, 1994, and was required to be implemented no later than October 1, 1995. The provisions of Amendment No. 362 are effective December 16, 1996 and must be implemented no later than May 1, 1997. State agencies shall implement the provisions no later than the required implementation date. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implemented the provision prior to the required implementation date, whichever is earlier. State agencies are required to adjust the cases of participating households at the next recertification, at household request, or when the case is next reviewed, whichever comes first. State agencies which fail to implement or adjust cases by the required implementation date shall provide restored benefits as appropriate. For quality control purposes, any variances resulting from implementation of the provisions are excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A). State agencies which implement prior to the required implementation date must notify the appropriate regional office prior to implementation that they wish the variance exclusion period to begin with actual implementation, as provided in 7 CFR 275.12(d)(2)(vii)(A). Absent such notification, the exclusionary period will begin with the required implementation date.

(149) *Amendment No. 374.* The Higher Education Act Amendments of 1986, as amended in 1987, were effective and required to be implemented for the 1988–89 school year; the Perkins Act was effective and required to be implemented on July 1, 1991; the Mickey Leland Act (as amended by the 1991 Technical Amendments to the Food Stamp Act) was effective and required to be implemented on February 1, 1992, and the exclusions contained in the Higher Education Act Amendments of 1992 for the Tribal Development Student Assistance Revolving Loan Program were effective and required to be implemented on October 1, 1992, and for Title IV and BIA student assistance on July 1, 1993. The provisions of Amendment No. 374 are effective December 16, 1996 and must be implemented by March 1, 1997. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. If implementation of the acts referenced in this paragraph or this amendment is delayed, benefits shall be restored, as appropriate, in accordance with the Food Stamp Act. Any variance resulting from implementation of this amendment shall be excluded from error analysis for 120 days from March 1, 1997.

(150) *Amendment No. 365.* This provision is effective December 16, 1996 and must be implemented no later than March 1, 1997. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with §275.12(d)(2)(vii) of this chapter.

(151) *Amendment No. 375.* Public Law 103–66, the Mickey Leland Childhood Hunger Relief Act, was effective and required to be implemented on September 1, 1994. The provisions of Amendment No. 375 are effective December 16, 1996, and must be implemented by March 1, 1997. The State agency shall implement the provisions of this amendment no later than the appropriate required implementation date for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits, as may be appropriate under the Food Stamp Act, back to the appropriate required implementation date. If for any reason a State

agency fails to implement on the appropriate implementation date, restored benefits shall be provided, if appropriate, back to the appropriate required implementation date or the date of application, whichever is later. Any variances resulting from implementation of this amendment shall be excluded from quality control error analysis for 120 days from March 1, 1997.

(152) *Amendment No. 361* The provisions of *Amendment No. 361* are effective December 26, 1996, and must be implemented May 27, 1997. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later.

If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter.

(153) *Amendment No. 366*. (i) With the exception of the changes to § 275.3(c)(4) [Arbitration], § 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], § 275.23(e)(7) [Good Cause], and § 275.23(e)(9) [timeframes], all quality control changes that are made by Amendment No. 366 shall be implemented July 2, 1997.

(ii) The quality control changes to § 275.3(c)(4) [Arbitration], § 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], § 275.23(e)(7) [Good Cause], and § 275.23(e)(9) [Timeframes], shall be implemented after approval of the provisions at § 275.3(c)(4) [Arbitration], and § 275.23(e)(7) [Good Cause] by the Office of Management and Budget under the Paperwork Reduction Act of 1995. FNS will publish a notice in the FEDERAL REGISTER announcing the implementation date. It shall be a date occurring after the publication date of the notice.

(154) *Amendment No. 386*. The provisions of Amendment No.386 are effective August 4, 2000. State agencies may begin implementing the rule August 4, 2000 but not later than January 2, 2001. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials according to 7 CFR 274.12(f)(10)(viii).

(155) *Amendment No. 373*. The provision at § 275.23(e)(5)(iii) is effective and is to be implemented on July 16, 1999. The following provisions are effective on October 1, 1999 and are to be implemented on October 1, 2000, with the start of the Fiscal Year 2001 quality control review period: § 271.2; § 275.3(c)(3)(ii); § 275.10(a); § 275.11(c)(1); § 275.11(e)(2); § 275.11(f)(2); § 275.13(a); § 275.13(b); § 275.13(c)(1); § 275.13(c)(2); § 275.13(f)(2) and § 275.23(c)(4). The remaining provisions of this rule are effective and are to be implemented October 1, 1999, with the start of the Fiscal Year 2000 quality control review period, which begins with the October 1999 sample month.

(156) *Amendment No. 379*. The provision of *Amendment No.* 379 regarding the 15-percent exemption and additional funding for E&T is effective and must be implemented no later than November 2, 1999. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

(157) *Amendment No. 381*. The provisions of Amendment 381 are implemented as follows:

(i) The definition of ''Homeless individual'' in § 271.2, and the amendments to § 273.1(b)(1)(ii), § 273.2(i)(3)(i) and (i)(3)(ii) were to be implemented August 22, 1996;

(ii) The amendments to § 273.8(f)(1) and § 273.10(e)(4)(ii) were to be implemented October 1, 1996;

(iii) The amendment to § 273.9(d)(8) was to be implemented January 1, 1997;

(iv) The amendments to §273.1(b)(1)(iii) and §273.8(e)(3)(i)(A) must be implemented no later than March 1, 2001; and

(v) All remaining amendments must be implemented no later than January 1, 2001.

(158) *Amendment No. 382.* The provisions of Amendment No.379 are effective and must be implemented March 30, 2000.

(159) *Amendment (385).* The provisions in §277.11(d) regarding time limits for State agencies to file claims to amend a prior expenditure report to request retroactive funding for costs previously incurred are effective October 1, 2000. The conforming amendments to Food Stamp Program regulations in §§272.1(g), 272.2(c)(3), 272.11(d) and (e), 274.12(k), 277.4(b) and (g), 277.9(b), 277.18(b), (d), (e), (g) and (p)(5), and appendix A to part 277 and the removal of §§277.15 and 277.19 are effective June 23, 2000.

(160) Amendment 389. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA) set the date of enactment, August 1, 2000, as the effective date for the provisions of the law relating to recipient claims. These non-discretionary provisions of this rule are at §273.18(c)(1)(ii)(B), §273.18(f) and §273.18(g) and are effective retroactive to August 1, 2000. The remaining amendments of this rule are effective and must be implemented no later than August 1, 2000.

(161) *Amendment No. 388* The provisions of Amendment No. 388 are implemented as follows:

(i) State agencies may implement the following amendments at their discretion at any time on or after the effective date: §272.8; §272.11(a); §273.2(f)(9)(i); §273.2(f)(10); §273.2(j)(2)(ii); §273.9(d)(6)(i); §273.9(d)(6)(iii)(E); §273.11(a)(3)(v); §273.12(a)(1)(vii); §273.25; and §277.4(b).

(ii) State agencies may implement the following amendment at their discretion at any time after the effective date established by OMB approval of the associated information collection burden: §273.12(f)(4).

(iii) State agencies must implement the following amendments no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits: §273.2(c)(2)(i), §273.2(e)(1), §273.2(e)(2)(i), §273.2(e)(2)(ii), §273.2(e)(3), §273.4(c)(3)(iv); and §273.12(c)(3). State agencies must convert current caseloads no later than the next recertification following the implementation date.

(iv) State agencies must implement the amendment to §273.2(b)(4)(iv) no later than August 1, 2001, for all households newly applying for Program benefits.

(v) State agencies must implement all remaining amendments no later than June 1, 2001, for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date.

(vi) Acting under policy guidance the Department issued previous to the publication of this final rule, several State agencies that have identified programs to confer categorical eligibility for food stamps that do not meet the criteria established at §§273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B) of this chapter. Any such State agency may continue to use these programs to confer categorical eligibility for food stamp purposes until September 30, 2001.

(vii) A State agency which first implements option 1 under 7 CFR 273.11(c)(3)(ii), and then decides at a later date to implement option 2 under that same paragraph is entitled to a second variance exclusion period under 7 CFR 275.12(d)(2)(vii).

(162) *Amendment No. 384.* The provisions of Amendment No. 384 are effective September 14, 2000, and must be implemented as follows:

(i) Any new contract executed after October 16, 2000, must have provisions for interoperability and portability which include an implementation date for this functionality no later than October 1, 2002, except under the following circumstances:

(A) State agencies with contracts entered into before October 16, 2000, are not required to re-negotiate their EBT

services contract to include interoperability and portability, even if the contract expires after the October 1, 2002 deadline; such State agencies are exempt from the interoperability requirement until they re-negotiate or re-procure their EBT contract.

(B) Smart Card systems are not required to be interoperable with other State EBT systems until such time that the Department determines a practicable technological method is available for interoperability with online EBT systems.

(ii) Enhanced funding is available for interoperability costs incurred after February 11, 2000, and before October 1, 2002, for State agencies which have implemented standards of interoperability and portability adopted by a majority of State agencies, and for such costs incurred after September 1, 2002, for State agencies that have adopted standards for interoperability and portability in accordance with this regulation at 7 CFR 274.12.

(163) [Reserved]

(164) *Amendment No. 390*. The provisions of Amendment No. 390 are effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, Electronic Benefit Transfer (EBT) systems must be in place statewide no later than October 1, 2002, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(165) *Amendment No. 387*—This rule is effective no later than {insert the first day of the month 60 days after publication of the final rule, except for the amendment to 7 CFR 272.2(d)(1)(xiii) which is effective August 1, 2001. State agencies must implement the provisions in this final rule no later than August 1, 2001.

(166) *Amendment No. 393*. The provisions of Amendment No. 393, regarding the Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are effective August 19, 2002.

(167) *Amendment No. 376*. The provisions of Amendment No. 376 are effective May 29, 2003 and must be implemented no later than November 1, 2003. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current change reporting caseload shall be converted to these provisions no later than the required implementation date in accordance with procedures established by the State agency. However, for households subject to the reporting requirements at § 273.12(a)(1)(i)(C)(*1*) or (*2*) of this chapter, the State agency has until January 1, 2004 to convert households to 6 month certification periods. Monthly reporting households shall be converted in accordance with § 273.21(r) of this chapter. For quality control purposes, any variances resulting from the implementation of this rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with § 275.12(d)(2)(vii) of this chapter.

(168) *Amendment No. 394*. The interim and final provisions of Amendment No. 394 are effective May 11, 2005. State agencies may implement the provisions anytime after May 11, 2005 but no later than October 11, 2005.

(169) *Amendment No. 395*. The provisions of Amendment 395 are effective December 15, 2003.

(170) *Amendment No. 396*. The provisions of amendment number 396 are effective April 8, 2005.

(171) *Amendment No. 397*. The provisions of Amendment No. 397 are effective January 4, 2006. State agencies may implement the provisions anytime after the rule is published but no later than June 5, 2006.

(172) Amendment No. 400. The provisions of Amendment No. 400, regarding the Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002 are effective August 8, 2006.

(173) *Amendment No. 401*. The provisions of Amendment No. 401 are implemented as follows:

(i) The following amendments were to be implemented October 1, 2002: 7 CFR 273.4(a)(6)(ii)(H), 7 CFR 273.8(b), and 7 CFR 273.9(d)(1).

(ii) The following amendments were to be implemented April 1, 2003: 7 CFR 273.4(a)(6)(ii)(B) through 7 CFR 273.4(a)(6)(ii)(F) and 273.4(a)(6)(iii).

(iii) The following amendments were to be implemented October 1, 2003: 7 CFR 273.4 (a)(6)(ii)(J); 7 CFR 273.4(c)(3)(vi).

(iv) State agencies must implement the following amendments no later than August 1, 2010: 7 CFR 273.4(c)(2)(v), 7 CFR 273.4(c)(3)(iv), 7 CFR 273.4(c)(3)(vii), 7 CFR 273.9(b)(1)(vi), and 7 CFR 273.9(c)(3)(ii)(A).

(v) State agencies may implement all other amendments on or after the effective date.

(vi) State agencies that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

[Amdt. 132, 43 FR 47884, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 272.2 Plan of operation.

(a) *General purpose and content*—(1) *Purpose*. State agencies shall periodically plan and budget program operations and establish objectives. When planning and budgeting for program operations for the next year, State agencies shall consider major corrective action objectives, existing program strengths and deficiencies, and other factors anticipated to impact on the operation of the State's Food Stamp Program and on projected expenditures.

(2) *Content*. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement. In addition, certain attachments to the Plan are specified in this section and in § 272.3. The requirements for the basic components and attachments are specified in § 272.2(c) and § 272.2(d) respectively. The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act and the FNS-approved State Plan of Operation. The Budget Projection Statement and Program Activity Statement provide information on the number of actions and amounts budgeted for various functional areas such as certification and issuance. The Plan's attachments include the Quality Control Sample Plan, the Disaster Plan (currently reserved), the Employment and Training Plan, the optional Nutrition Education Plan, the optional plan for Program informational activities directed to low-income households, the optional plan for intercepting Unemployment Compensation (UC) benefits for collecting claims for intentional Program violations, the Systematic Alien Verification for Entitlements (SAVE) Plan, and the plan for the State Income and Eligibility Verification System. The State agency shall either include the Workfare Plan in its State Plan of Operation or append the Workfare Plan to the State Plan of Operation, as appropriate, in accordance with § 273.22(b)(3) of this chapter. The Workfare Plan shall be submitted separately, in accordance with § 273.22(b)(1) of this chapter. The ADP/CIS Plan is considered part of the State Plan of Operation but is submitted separately as prescribed under § 272.2(e)(8). State agencies and/or political subdivisions selected to operate a Simplified Application/Standardized Benefit Project shall include that Project's Work Plan in the State Plan of Operation. The Plan's attachments shall also include the Mail Issuance Loss Reporting Level Plan.

(b) *Federal/State Agreement*. (1) The wording of the pre-printed Federal/State Agreement is as follows:

The State of _____ and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations and the FNS-approved State Plan of Operation. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.

2. Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), section 11(c) of the Food Stamp Act of 1977, as amended, the Age Discrimination Act of 1975 (Pub. L. 94–135) and the Rehabilitation Act of 1973 (Pub. L. 93–112, sec. 504) and all requirements imposed by the regulations issued pursuant to these Acts by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under the Food Stamp Program.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

FNS agrees to: 1. Pay administrative costs in accordance with the Food Stamp Act, implementing regulations, and an approved Cost Allocation Plan.

2. Carry-out any other responsibilities delegated by the Secretary in the Food Stamp Act of 1977, as amended.

Date _____

Signature _____
(Governor or Authorized Designee)

Date _____

Signature _____
(Regional Administrator, FNS)

(2) The State agency may propose alternative language to any or all the provisions listed in paragraph (b)(1) of this section. The alternative language is subject to approval by both parties before signature.

(c) *Budget Projection Statement and Program Activity Statement.* (1) The State agency shall submit to FNS for approval a Budget Projection Statement and Program Activity Statement in accordance with the submittal dates in § 272.2(e).

(i) The Budget Projection Statement solicits projections of the total costs for major areas of program operations. The Budget Projection Statement shall be submitted annually and updated as necessary through the year. The Budget Projection Statement shall contain projections for each quarter of the next Federal fiscal year. The State agency shall submit with the Budget Projection Statement a narrative justification documenting and explaining the assumptions used to arrive at the projections. The narrative shall cover such subjects as: The number and salary level of employees; other factors affecting personnel costs including anticipated increases in pay rates or benefits, and reallocations of staff among units or functions, insofar as these might result in cost increases or decreases; costs for purchasing, leasing, and maintaining equipment and space, especially as concerns any upcoming, one-time-only purchases of new capital assets such as ADP equipment, renegotiation of leases, changes in depreciation rates or procedures, relocation of offices, maintenance and renovation work, and inflation; issuance system costs, including renegotiation of issuing agent fees and plans to change issuance systems; changes in caseload and factors contributing to increases or decreases in the number of participants; recertifications, including the anticipated impact of economic conditions (and in particular unemployment) and seasonality; cost implications of corrective action plans; anticipated changes in program regulations and operating guidelines and instructions; training needs; travel costs; and adjustments in insurance premiums. The narrative should cover as many of the items listed above, and any other items deemed relevant by the State agency, that will have a significant impact on costs. The State agency is not required to discuss every item in the list in every submission of a Budget Projection Statement. The narrative should concentrate on items that account for increases or decreases in costs from the preceding submissions.

(ii) The Program Activity Statement, to be submitted annually, solicits a summary of program activity for the State agency's operations during the preceding fiscal year.

(2) The organizational outline submitted in 1982 as an attachment to the Program Activity Statement shall be

considered the basic outline. Henceforth, changes to this outline shall be provided to FNS as they occur. The outline contains the following information:

(i) The position of the head of the State agency responsible for administering the Food Stamp Program in relation to the overall State organizational structure, i.e., the Program Director in relation to the Commissioner of Welfare;

(ii) A description of the organizational structure through which the State agency will administer and operate the Food Stamp Program, including whether the Program is State, county, locally, or regionally-administered; whether the workers have single Food Stamp Program or multi-program functions; and the title and position of the individual or panel designated as the hearing authority and whether officials conduct both fair and fraud hearings.

(iii) A description of the funding arrangement by which State, county, and local jurisdictions will contribute to the State agency portion of administrative costs;

(iv) The position within the State organizational structure of the Performance Reporting System (PRS) coordinator, including whether the PRS coordinator is full or part-time, and is responsible for direct supervision over Quality Control or Management Evaluation or if these functions are handled separately, and whether quality control reviewers have single Food Stamp Program or multi-program review responsibilities;

(v) The position of the training coordinator and whether this is a full or part-time position; and

(vi) The organizational entity responsible for corrective action.

(3) *Additional attachments.* Attached for informational purposes (not subject to approval as part of the plan submission procedures) to the Program Activity Statement and submitted as required in paragraph (e)(3) of this section shall be the agreements between the State agency and the United States Postal Service for coupon issuance, and between the State agency and the Social Security Administration for supplemental income/food stamp joint application processing and for routine user status.

(d) *Planning documents.* (1) The following planning documents shall be submitted:

(i) Quality Control Sampling Plan as required by § 275.11(a)(4);

(ii) Disaster Plan as required by § 280.6 (currently reserved), or certification that a previously submitted Disaster Plan has been reviewed and remains current;

(iii) Nutrition Education Plan if the State agency elects to request Federal Food Stamp Program administrative matching funds to conduct nutrition education programs as discussed in paragraph (d)(2) of this section.

(iv) A plan for the State Income and Eligibility Verification System required by § 272.8.

(v) Employment and Training Plan as required in § 273.7 (c)(6).

(vi) ADP/CIS Plan as required by § 272.10.

(vii) A plan for the Systematic Alien Verification for Entitlements (SAVE) Program as required by § 272.11(e).

(viii) Mail Issuance Loss Reporting Level Plan required by § 276.2(b)(4), for the State agency using mail issuance, shall contain the unit level of reporting mail issuance losses for the upcoming fiscal year as elected by the State agency. If a State agency does not revise its Plan by August 15 in any given year, FNS shall continue to require reporting and to assess liabilities for the next fiscal year at the level last indicated by the State agency. If the agency has selected the unit provided for in § 276.2(b)(4)(ii), a listing of the issuance sites or counties comprising each administrative unit within the State agency shall also be included in the Plan.

(ix) A plan for Program informational activities as specified in § 272.5(c).

(x) Claims Management Plan as required by § 273.18(a)(3) to be submitted for informational purposes only; not subject to approval as part of the plan submission procedures under paragraph (e) of this section.

(xi)–(xii) [Reserved]

(xiii) If the State agency chooses to implement the optional provisions specified in (273.11(k), (l), (o), (p), and

(q) of this chapter, it must include in the Plan's attachment the options it selected, the guidelines it will use, and any good cause criteria under paragraph (o). For § 273.11(k) of this chapter, the State agency must identify which sanctions in the other programs this provision applies to. The State agency must also include in the plan a description of the safeguards it will use to restrict the use of information it collects in implementing the optional provision contained in § 273.11(p) of this chapter.

(xiv) The State agency's disqualification plan, in accordance with § 273.7(f)(3) of this chapter.

(xv) If the State agency chooses to implement the provisions for a work supplementation or support program, the work supplementation or support program plan, in accordance with § 273.7(l)(1) of this chapter.

(xvi) If the State agency chooses to implement the optional provisions specified in:

(A) Sections 273.2(f)(1)(xii), 273.2(f)(8)(i)(A), 273.9(d)(5), 273.9(d)(6)(i), and 273.12(a)(4) of this chapter, it must include in the Plan's attachment the options it has selected;

(B) Section 273.8(e)(19) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the resources being excluded under the provision;

(C) Section 273.9(c)(3) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of educational assistance being excluded under the provision;

(D) Section 273.9(c)(18) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of payments being excluded under the provision;

(E) Section 273.9(c)(19) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of income being excluded under the provision;

(F) Section 273.12(a)(5) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of households to whom the option applies;

(G) Section 273.12(c) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the deductions affected; and

(H) Section 273.26 of this chapter, it must include in the Plan's attachment a statement that the option has been selected and specify the categories of households eligible for transitional benefits and the maximum number of months for which such benefits will be provided.

(2) *Nutrition Education Plan.* If submitted, the Nutrition Education Plan shall contain:

(i) The number and positions of staff that will be conducting nutrition education;

(ii) Description of activities in the nutrition education program; and

(iii) Assurance that nutrition education programs for which USDA provides Food Stamp Program administrative matching funds are conducted exclusively for the benefit of Food Stamp Program applicants and participants and do not duplicate USDA's Expanded Food and Nutrition Education Program's efforts in the State.

(e) *Submittal requirements.* States shall submit to the appropriate FNS Regional Office for approval each of the components of the Plan of Operation for approval within the timeframes established by this paragraph. Approval or denial of the document may be withheld pending review by FNS. However, if FNS fails to either approve, deny, or request additional information within 30 days, the document is approved. If additional information is requested, the State agency shall provide this as soon as possible, and FNS shall approve or deny the Plan within 30 days after receiving the information.

(1) The Federal/State agreement shall be signed by the Governor of the State or authorized designee and shall be submitted to FNS within 120 days after publication of these regulations in final form and shall remain in effect until terminated.

(2) The Budget Projection Statement and Program Activity Statement shall be signed by the head of the State

agency or its chief financial officer and submitted as follows:

(i) The Budget Projection Statement shall be submitted annually, no later than August 15 of each year.

(ii) The Program Activity Statement shall be submitted annually, not later than 45 days after the end of the State agency's fiscal year. The first report is due 45 days after the end of the State's 1981 fiscal year. The first report is not required to contain information that is not currently captured by the State agency's information system. State agencies shall amend their data gathering systems so that all items can be completed on the second report, due for the 1982 fiscal year.

(3) Changes to the organizational outline required by § 272.2(c)(2) and the agreements with other agencies outlined in § 272.2(c)(3)(ii) shall be provided to FNS as changes occur. The attachments outlined in § 272.2(c)(3)(i) shall be submitted annually with the Program Activity Statement.

(4) The Quality Control Sampling Plan shall be signed by the head of the State agency and submitted to FNS prior to implementation as follows:

(i) According to the timeframes specified in paragraph (e)(4)(ii) of this section, prior to each annual review period each State agency shall submit any changes in their sampling plan for FNS approval or submit a statement that there are no such changes. These submittals shall include the statement required by § 275.11(a)(2), if appropriate. The Quality Control Sampling Plan in effect for each State agency as of the beginning of Fiscal Year 1984 shall be considered submitted and approved for purposes of this section, provided that the State agency has obtained prior FNS approval of its sampling plan.

(ii) Initial submissions of and major changes to sampling plans and changes in sampling plans resulting from general changes in procedure shall be submitted to FNS for approval at least 60 days prior to implementation. Minor changes to approved sampling plans shall be submitted at least 30 days prior to implementation.

(5) *Disaster Plan*. [Reserved]

(6) The Nutrition Education Plan shall be signed by the head of the State agency and submitted prior to funding of nutrition education activities when the State agency elects to request Federal administrative matching funds to conduct Nutrition Education Programs. The plan shall then be submitted annually no later than August 15. The initial submission may be for a period of less than or more than a year in order to meet the August 15 deadline.

(7) Where applicable, State agencies shall consult (on an ongoing basis) with the tribal organization of an Indian reservation about those portions of the State Plan of Operation pertaining to the special needs of the members of the tribe.

(8) *ADP/CIS Plan*. The ADP/CIS Plan shall be signed by the head of the State agency and submitted to FNS by October 1, 1987. State agencies which require additional time to complete their ADP/CIS plan may submit their plan in two phases as described in § 272.10(a)(2), with the first part of the plan being submitted October 1, 1987. State agencies requiring additional time shall submit the second part of their plans by January 1, 1988. If FNS requests additional information to be provided in the State agency ADP/CIS Plan or if FNS requests that changes be made in the State agency ADP/CIS Plan, State agencies must comply with FNS comments and submit an approvable ADP/CIS Plan within 60 days of their receipt of the FNS comments but in no event later than March 1, 1988. Requirements for the ADP/CIS plan are specified in § 272.10.

(9) The Employment and Training Plan shall be submitted as specified under § 273.7(c)(8).

(f) *Revisions*. Revisions to any of the planning documents or the Program and Budget Summary Statement shall be prepared and submitted for approval to the appropriate FNS Regional Office in the same manner as the original document. However, revisions to the budget portion of the Budget Projection Statement and Program Activity Statement shall be submitted as follows:

(1) *Program funds*. (i) For program funds, State agencies shall request prior approvals promptly from FNS for budget revisions whenever:

(A) The revision indicates the need for additional Federal funding;

(B) The program budget exceeds $100,000, and the cumulative amount of transfers among program functions exceeds or is expected to exceed five percent of the program budget. The same criteria apply to the cumulative amount of transfers among functions and activities when budgeted separately for program funds provided to a subagency, except that FNS shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended;

(C) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs; or

(D) The revisions pertain to the addition of items requiring prior approval by FNS in accordance with the provisions of the applicable cost principles specified in part 277 appendix A of the regulations.

(ii) No other changes to the Program fund budget require approval from FNS. Examples of changes which do not require Federal approval are: The use of State agency funds to accomplish program objectives over and above the State agency minimum share included in the approved Program budget; and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(iii) The requirements of paragraph (f)(1)(i)(B) of this section may be waived by FNS provided that:

(A) No different limitation or approval requirement may be imposed; and,

(B) FNS shall not permit a transfer which would cause any Federal appropriation, or part, thereof, to be used for purpose other than those intended.

(2) *Authorized funds exceeding State agency needs.* When it becomes apparent that the funds authorized by the Letter of Credit will exceed the needs of the State agency, FNS will make appropriate adjustments in the Letter of Credit in accordance with part 277.

(3) *Method of requesting approvals.* When requesting approval for budget revisions, State agencies shall use the same format as the Budget Projection Statement used in the previous submission. However, State agencies may request by letter the approvals required by paragraph (f)(1)(i)(D) of this section.

(4) *Notification of approval or disapproval.* Within 30 days from the date of receipt of the request for budget revisions, FNS shall review the request and notify the State agency whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, FNS shall inform the State agency in writing as to when the decision will be made.

[Amdt. 156, 46 FR 6315, Jan. 21, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 272.3 Operating guidelines and forms.

(a) *Coverage of operating guidelines.* State agencies shall prepare and provide to staff responsible for administering the Program written operating procedures. In those States which have State regulations that outline these Operating Procedures, these are equivalent to Operating Guidelines. Other examples of Operating Guidelines are manuals, instructions, directives or transmittal memos. The following categories shall be included in the Operating Guidelines:

(1) Certification of households, including but not limited to:

(i) Application processing;

(ii) Nonfinancial eligibility standards;

(iii) Financial criteria and the eligibility determination;

(iv) Actions resulting from eligibility determinations;

(v) Determining eligibility of special situation households as specified in § 273.11;

(vi) Additional certification functions such as processing changes during certification periods and reporting requirements for households;

(vii) Lost benefits/claims against households;

(viii) Fair/fraud hearings;

(ix) A list of Federal and State energy assistance programs that qualify for the resource and income exclusions discussed in §§ 273.8(e)(14) and 273.9(c)(11) and how these payments are

identified as being eligible for the exemption;

(x) Work registration and employment and training requirements.

(2) Issuance, accountability, and reconciliation;

(3) The Performance Reporting System, including instructions or directives for conducting quality control and management evaluation reviews and the quality control sample plan;

(4) A description of the training program, including a listing of the organizational component which conducts training, to whom and how often training is provided;

(5) The fair/fraud hearing procedures if not included in the Certification Handbook.

(6) The consultation process (where applicable) with the tribal organization of an Indian reservation about the State Plan of Operation and Operating Guidelines in terms of the special needs of members of the tribe and the method to be used for incorporating the comments from the tribal organization into the State Plan of Operations and Operating Guidelines.

(b) *Submittal of operating guidelines and forms.* (1) State agencies shall develop the necessary forms, except the Application for Food Stamps, and other operating guidelines to implement the provisions of the Food Stamp Act and regulations. In accordance with §§ 273.2(b) and 273.12(b)(1) State agencies shall use the FNS-designed Application for Food Stamps or an FNS-approved deviation.

(2) State agencies shall submit their operating guidelines and forms and amendments to these materials to FNS for review and audit purposes simultaneous with distribution within the States.

(3) State agencies may request that FNS review and provide comments on their operating guidelines, forms and any amendments to these materials prior to distribution of the materials within the State.

(4) If deficiencies are discovered in a State agency's materials, FNS shall provide the State agency with written notification.

(c) *Waivers.* (1) The Administrator of the Food and Nutrition Service or Deputy Administrator for Family Nutrition Programs may authorize waivers to deviate from specific regulatory provisions. Requests for waivers may be approved only in the following situations:

(i) The specific regulatory provision cannot be implemented due to extraordinary temporary situations such as a sudden increase in the caseload due to the loss of SSI cash-out status;

(ii) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(iii) Unique geographic or climatic conditions within a State preclude effective implementation of the specific regulatory provision and require an alternate procedure; for example, the use of fee agents in Alaska to perform many of the duties involved in the certification of households including conducting the interviews.

(2) FNS shall not approve requests for waivers when:

(i) The waiver would be inconsistent with the provisions of the Act; or

(ii) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that States submit appropriate justification as part of the State Plan of Operation.

(4) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers shall include but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) The portion of caseload or potential caseload which would be affected and the characteristics of the affected caseload such as geographic, urban, or rural concentration;

(iii) Anticipated impact on service to participants or potential participants who would be affected;

(iv) Anticipated time period for which the waiver is needed; and

(v) Thorough explanation of the proposed alternative provision to be used in lieu of the waived regulatory provision.

(5) Notwithstanding the preceding paragraphs, waivers of the certification period timeframes as described in § 273.10(f) may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 3(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(6) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 5(f) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(7) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 6(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(d) *Public comment.* State agencies shall solicit public input and comment on overall Program operations as State laws require or as the individual State agency believes would be useful.

[Amdt. 156, 46 FR 6315, Jan. 21, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 272.4 Program administration and personnel requirements.

(a) *Merit personnel.* (1) State agency personnel used in the certification process shall be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission under section 208 of the Intergovernmental Personnel Act of 1970.

(2) State agency employees meeting the standards outlined in paragraph (a)(1) of this section shall perform the interviews required in § 273.2(e). Volunteers and other non-State agency employees shall not conduct certification interviews or certify food stamp applicants. Exceptions to the use of State merit system personnel in the interview and certification process are specified in § 273.2(k) for SSI households, § 272.7(d) for households residing in rural Alaska, and part 280 for disaster victims. State agencies are encouraged to use volunteers in activities such as outreach, prescreening, assisting applicants in the application and certification process, and in securing needed verification. Individuals and organizations who are parties to a strike or lockout, and their facilities, may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the State agency, coupon issuers, coupon bulk storage points, and Federal employees involved in administration of the program shall be permitted access to food coupons, ATP's, or other issuance documents.

(b) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (b) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language;

(2) The State agency shall provide materials used in Program informational activities in the appropriate language(s) as follows:

(i) In project areas with less than 2,000 low-income households, if approximately 100 or more of those households are of a single-language minority;

(ii) In project areas with 2,000 or more low-income households, if approximately 5 percent or more of those

households are of a single-language minority; and

(iii) In project areas with a certification office that provides bilingual service as required in paragraph (b)(3) of this section.

(3) The State agency shall provide both certification materials in the appropriate language(s) and bilingual staff or interpreters as follows:

(i) In each individual certification office that provides service to an area containing approximately 100 single-language minority low-income households; and

(ii) In each project area with a total of less than 100 low-income households if a majority of those households are of a single-language minority.

(A) Certification materials shall include the food stamp application form, change report form and notices to households.

(B) If notices are required in only one language other than English, notices may be printed in English on one side and in the other language on the reverse side. If the certification office is required to use several languages, the notice may be printed in English and may contain statements in other languages summarizing the purpose of the notice and the telephone number (toll-free number or a number where collect calls will be accepted for households outside the local calling area) which the household may call to receive additional information. For example, a notice of eligibility could in the appropriate language(s) state:

> Your application for food stamps has been approved in the amount stated above. If you need more information telephone _____.

(4) In project areas with a seasonal influx of non-English-speaking households, the State agency shall provide bilingual materials and staff or interpreters, if during the seasonal influx the number of single-language minority low-income households which move into the area meets or exceeds the requirements in paragraphs (b) (2) and (3) of this section.

(5) The State agency shall insure that certification offices subject to the requirements of paragraph (b) (3) or (4) of this section provide sufficient bilingual staff or interpreters for the timely processing of non-English-speaking applicants.

(6) The State agency shall develop estimates of the number of low-income single-language minority households, both participating and not participating in the program, for each project area and certification office by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P–25, No. 627) and knowledge of project areas and areas serviced by certification offices. Local Bureau of Census offices, Community Services Administration offices, community action agencies, planning agencies, migrant service organizations, and school officials may be important sources of information in determining the need for bilingual service. If these information sources do not provide sufficient information for the State agency to determine if there is a need for bilingual staff or interpreters, each certification office shall, for a 6-month period, record the total number of single-language minority households that visit the office to make inquiries about the program, file a new application for benefits, or be recertified. Those certification offices that are contacted by a total of over 100 single-language minority households in the 6-month period shall be required to provide bilingual staff or interpreters. State agencies shall also combine the figures collected in each certification office to determine the need for bilingual outreach materials in each project area.

(c) *Internal controls*—(1) *Requirements.* In order to safeguard certification and issuance records from unauthorized creation or tampering, the State agency shall establish an organizational structure which divides the responsibility for eligibility determinations and coupon issuance among certification, data management, and issuance units. The certification unit shall be responsible for the determination of household eligibility and the creation of records and documents to authorize the issuance of coupons to eligible households. The data management unit, in response to input from the certification unit, shall create and maintain the household issuance record (HIR) master file on cards, computer

discs, tapes, or similar memory devices. The issuance unit shall provide certified households with the authorized allotments. In cases where personnel are periodically, or on a part-time basis, shifted from one unit to another, supervisory controls should be sufficient to assure that the unauthorized creation or modification of case records is not possible.

(2) *Exceptions*. With prior written FNS approval, a project area may combine unit responsibilities if the controls specified in paragraph (c)(1) of this section have been found to be administratively infeasible.

(i) To receive approval of combined operations, the State agency shall establish special review requirements which at a minimum include:

(A) Biweekly reconciliation and verification of transactions; and

(B) Semiannual comparison of HIR cards and case records as required by § 274.6(d) and, at least once every other month, second-party review of certification actions.

(ii) The State agency shall annually determine whether each combined operation continues to be justified and shall so advise FNS in writing.

(d) *Court suit reporting*—(1) *State agency responsibility*. (i) In the event that a State agency is sued by any person(s) in a State or Federal Court in any matter which involves the State agency's administration of the Food Stamp Program, the State agency shall immediately notify FNS that suit has been brought and shall furnish FNS with copies of the original pleadings. State agencies involved in suits shall, upon request of FNS, take such action as is necessary to join the United States and/or appropriate officials of the Federal Government, such as the Secretary of USDA or the Administrator of FNS, as parties to the suit. FNS may request to join the following types of suits:

(A) Class action suits;

(B) A suit in which an adverse decision could have a national impact;

(C) A suit challenging Federal policy such as a provision of the Act or regulations or an interpretation of the regulations; or,

(D) A suit based on an empirical situation that is likely to recur.

(ii) FNS may advise a State agency to seek a settlement agreement of a court suit if the State agency is being sued because it misapplied Federal policy in administering the Program.

(iii) State agencies shall notify FNS when court cases have been dismissed or otherwise settled. State agencies shall also provide FNS with information that is requested regarding the State agency's compliance with the requirements of court orders or settlement agreements.

(2) FNS shall notify all State agencies of any suits brought in Federal court that involve FNS' administration of the Program and which have the potential of affecting many State agencies' Program operations. (State agencies need not be notified of suits brought in Federal Court involving FNS' administration of the Program which may only affect Program operations in one or two States.) The notification provided to State agencies shall contain a description of the Federal policy that is involved in the litigation.

(e) *State monitoring of duplicate participation*. (1) Each State agency shall establish a system to assure that no individual participates more than once in a month, in more than one jurisdiction, or in more than one household within the State in the Food Stamp Program. To identify such individuals, the system shall use names and social security numbers at a minimum, and other identifiers such as birth dates or addresses as appropriate.

(i) If the State agency detects a large number of duplicates, it shall implement other measures, such as more frequent checks or increased emphasis on prevention.

(ii) If the State agency provides cash assistance in lieu of coupons for SSI recipients or for households participating in cash-out demonstration projects, the State agency shall check to assure that no individual receives both coupons and other benefits provided in lieu of coupons. Checks to detect individuals receiving both food coupons and cash-out benefits, or any other form of duplicate benefits, shall be made at the time of certification, recertification, and whenever a new member is added to an existing household. However, if

the State agency can show that these time frames are incompatible with its system, the State agency shall check for duplicate benefits when necessary, but no less often than annually.

(2) Processing standards for duplicate participation checks at certification and recertification shall not delay the issuance of benefits.

(i) If the State agency chooses to check at the time of certification and recertification, the check for duplicates shall not delay processing of the application and provision of benefits beyond the normal processing standards in § 273.2(g).

(ii) If a duplicate is found in making such a check, the duplication needs to be resolved in accordance with § 273.2(f)(4)(iv) before the application can be processed and benefits provided. Delays in processing caused by this resolution shall be handled in accordance with § 273.2(h).

(3) State agencies shall develop follow-up procedures and corrective action requirements, including time frames within which action must be taken, to be applied to data obtained from matching for duplicate participation. Follow-up actions shall include, but not be limited to, the adjustment of benefits and eligibility, filing of claims, disqualification hearings, and referrals for prosecution, as appropriate.

(4) FNS reserves the right to review State agencies' use of data obtained from matching for duplicate participation and may require State agencies to take additional specific action to ensure that such data is being used to protect Program integrity.

(f) *Hours of operation.* State agencies are responsible for setting the hours of operation for their food stamp offices. In doing so, State agencies must take into account the special needs of the populations they serve including households containing a working person.

(g) *Fraud detection units.* State agencies shall establish and operate fraud detection units in all project areas in which 5,000 or more households participate in the Program. The fraud detection unit shall be responsible for detecting, investigating and assisting in the prosecution of Program fraud and need not be physically located in each 5,000 household ''catchment area''. The workers fulfilling this function need not work full-time in fraud detection nor work exclusively on the Program. A written State agency procedure which systematically identifies and refers potential fraud cases to Investigators shall be considered a ''detection'' activity meeting the requirements of this section. The fraud detection function may be performed by persons not employed by the State agency.

[Amdt. 132, 43 FR 47884, Oct. 17, 1978, as amended by Amdt. 221, 47 FR 35168, Aug. 13, 1982; Amdt. 211, 47 FR 53315, Nov. 26, 1982; Amdt. 237, 47 FR 57668, 57669, Dec. 28, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984; 54 FR 7003, Feb. 15, 1989; 54 FR 24527, June 7, 1989; Amdt. 320, 55 FR 6238, Feb. 22, 1990; Amdt. 371, 61 FR 60010, Nov. 26, 1996; Amdt. 388, 65 FR 70192, Nov. 21, 2000]

§ 272.5 Program informational activities.

(a) *Definition.* ''Program informational activities'' are those activities that convey information about the Program, including household rights and responsibilities, through means such as publications, telephone hotlines, and face-to-face contacts.

(b) *Minimum requirements.* State agencies shall comply with the following minimum information requirements for applicants and recipients.

(1) *Nutrition information.* FNS must encourage State agencies to develop Nutrition Education Plans as specified at § 272.2(d)(2) to inform applicant and participant households about the importance of a nutritious diet and the relationship between diet and health.

(2) State agencies shall encourage program participants to participate in the Expanded Food and Nutrition Education Program (EFNEP) and, wherever practicable, allow EFNEP personnel to come into food stamp offices to distribute informational materials and speak with food stamp recipients.

(3) Rights and responsibilities. State agencies shall inform participant and applicant households of their Program rights and responsibilities. This information may be provided through whatever means the State agencies deem appropriate.

(4) All Program informational material shall be available in languages

other than English as required in § 272.4(b) and shall include a statement that the Program is available to all without regard to race, color, sex, age, handicap, religious creed, national origin or political belief.

(c) *Program informational activities for low-income households.* At their option State agencies may carry out and claim associated costs for Program informational activities designed to inform low-income households about the availablity, eligibility requirements, application procedures, and benefits of the Food Stamp Program. Program informational materials used in such activities shall be subject to § 272.4(b), which pertains to bilingual requirements. Before FNS considers costs for such activities eligible for reimbursement at the fifty percent rate under part 277, State agencies shall obtain FNS approval for the attachment to their Plans of Operation as specified in § 272.2(d)(1)(ix). In such attachments, State agencies shall describe the subject activities with respect to the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. State agencies shall update this attachment to their Plans of Operation when significant changes occur and report projected costs for this Program activity in accordance with § 272.2 (c), (e), and (f).

[Amdt. 207, 47 FR 52334, Nov. 19, 1982. Redesignated by Amdt. 211, 47 FR 53316, Nov. 26, 1982; Amdt. 262, 49 FR 50597, Dec. 31, 1984; 52 FR 36398, Sept. 29, 1987; 54 FR 24527, June 7, 1989; Amdt. 320, 55 FR 6239, Feb. 22, 1990]

§ 272.6 Nondiscrimination compliance.

(a) *Requirement.* State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, disability, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), Americans with Disabilities Act of 1990 (42 U.S.C. 12101) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.

(b) *Right to file a complaint.* Individuals who believe that they have been subject to discrimination as specified in paragraph (a) of this section may file a written complaint with the Secretary or the Administrator, FNS, Washington, DC 20250, and/or with the State agency, if the State agency has a system for processing discrimination complaints. The State agency shall explain both the FNS and, if applicable, the State agency complaint system to each individual who expresses an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint in either or both systems.

(c) *FNS complaint requirements.* (1) Complaints shall contain the following information to facilitate investigations:

(i) The name, address, and telephone number or other means of contacting the person alleging discrimination.

(ii) The location and name of the organization or office which is accused of discriminatory practices.

(iii) The nature of the incident or action or the aspect of program administration that led the person to allege discrimination.

(iv) The reason for the alleged discrimination (age, race, color, sex, handicap, religious creed, national origin, or political belief).

(v) The names, titles (if appropriate), and addresses of persons who may have knowledge of the alleged discriminatory acts.

(vi) The date or dates on which the alleged discriminatory actions occurred.

(2) If a complainant makes allegations verbally and is unable or is reluctant to put the allegations in writing, the FNS employee to whom the allegations are made shall document the complaint in writing. Every effort shall be made by the individual accepting

the complaint to have the complainant provide the information specified in paragraph (c)(1) of this section.

(3) Complaints will be accepted by the Secretary or the Administrator, FNS, even if the information specified in paragraph (c)(1) of this section is not complete. However, investigations will be conducted only if information concerning paragraphs (c)(1) (ii), (iii) or (iv) of this section is provided.

(4) A complaint must be filed no later than 180 days from the date of the alleged discrimination. However, the time for filing may be extended by the Secretary.

(d) *State agency complaint requirements.* (1) The State agency may develop and use a State agency complaint system.

(2) The State agency shall submit to FNS a report on each discrimination complaint processed at the State level. The report shall contain as much information in paragraph (c)(1) of this section as is available to the State agency, the findings of the investigation, and, if appropriate, the corrective action planned or taken.

(e) *Reviews.* [Reserved]

(f) *Public notification.* The State agency shall: (1) Publicize the procedures described in paragraphs (b) and (c) of this section, and, if applicable, the State agency's complaint procedures; (2) insure that all offices involved in administering the program and that also serve the public display the nondiscrimination poster provided by FNS; and (3) insure that participants and other low-income households have access to information regarding nondiscrimination statutes and policies, complaint procedures, and the rights of participants, within 10 days of the date of a request.

(g) *Data collection.* The State agency must obtain racial and ethnic data on participating households in the manner specified by FNS. The application form must clearly indicate that the information is voluntary, that it will not affect the eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency must develop alternative means of collecting the ethnic and racial data on households, such as by observation during the interview, when the information is not provided voluntarily by the household on the application form.

(h) *Reports.* As required by FNS, the State agency must report the racial and ethnic data on participating household contacts on forms or formats provided by FNS.

[Amdt. 132, 43 FR 47884, Oct. 17, 1979. Redesignated by Amdt. 211, 47 FR 53315, Nov. 26, 1982, as amended by Amdt. 356, 59 FR 29713, June 9, 1994; 71 FR 28763, May 18, 2006; 76 FR 27606, May 12, 2011]

§ 272.7 Procedures for program administration in Alaska.

(a) *Purpose.* To achieve the efficient and effective administration of the Food Stamp Program in rural areas of Alaska, FNS has determined that it is necessary to develop additional regulations which are specifically designed to accommodate the unique demographic and climatic characteristics which exist in these rural areas. The regulations established in this section, except for paragraph (f) of this section, shall apply only in those areas of Alaska designated as ''rural'' in paragraph (b) of this section. All regulations not specifically modified by this section shall remain in effect.

(b) *Area Designations.* (1) Rural I Alaska TFP refers to a Thrifty Food Plan (TFP) that is the higher of the TFP that was in effect in each area on October 1, 1985, or 28.52 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: In all places in Kodiak Island Borough with the exception of Kodiak; in all places in the Kenai Peninsula Borough that are west of Cook Inlet (including Tyonek, Kustatan, Kalgin Island, Iliamna, Chenik, and Augustine Island) and Chugach Island, English Bay, Port Graham, Portlock, Pt. Gore, Pye Island, and Seldovia. In the Yukon-Koyukuk Census Area, the city of Nenana; and Skwentna in the Matanuska-Susitna Borough. In the Valdez-Cordova Census Area, all places except Dayville and Valdez; and in the Southeast Fairbanks Census Area all places except Big Delta, Delta Junction, and Fort Greely. In the Skagway-

Yakutat-Angoon Census Area, all places except Skagway; in Sitka Borough all places except Sitka; in the Wrangell-Petersburg Census Area, all places except Wrangell and Petersburg; in the Ketchikan Gateway Borough, all places except Ketchikan, Saxman, and Ward Cove; in the Prince of Wales-Outer Ketchikan Census Area, all places except Craig, Hyder, and Metlakatla.

(2) Rural II Alaska TFP refers to a TFP that is 56.42 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: North Slope Borough; Kobuk Census Area; Nome Census Area; Yukon-Koyukuk Census Area except for the city of Nenana; Wade Hampton Census Area; Bethel Census Area; Denali in the Matanuska-Susitna Borough; Dillingham-Bristol Bay Borough; and in all places in the Aleutian Islands except for Cold Bay and Adak.

(3) Urban Alaska TFP refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or .79 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. It is to be used in the following areas: Cold Bay and Adak in the Aleutian Islands; Kodiak in Kodiak Island Borough; Valdez and Dayville in the Valdez-Cordova Census Area; all places in Kenai Peninsula Borough that are on the Kenai Peninsula except for those specifically designated as Rural I; the entire Anchorage Borough; the entire Matanuska-Susitna Borough except for Denali and Skwentna; the entire Fairbanks-North Star Borough; the entire Juneau Borough; the entire Haines Borough; Sitka in the Sitka Borough; Skagway in the Skagway-Yakutat-Angoon Census Area; Wrangell and Petersburg in the Wrangell-Petersburg Census Area; Ketchikan, Saxman, and Ward Cove in the Ketchikan-Gateway Borough; Craig, Hyder, and Metlakatla in the Prince of Wales-Outer Ketchikan Census Area; and Big Delta, Delta Junction, and Fort Greely in the Southeast-Fairbanks Census Area.

(4) The State agency may, in consultation with FNS, change the designation of any Alaska subdivision contained in the Plan of Operation to reflect changes in demographics or the cost of food within the subdivision.

(c) *Fee agents.* ''Fee agent'' means a paid agent who, on behalf of the State, is authorized to make applications available to low-income households, assist in the completion of applications, conduct required interviews, secure required verification, forward completed applications and supporting documentation to the State agency, and provide other services as required by the State agency. Such services shall not include making final decisions on household eligibility or benefit levels.

(d) *Application* processing. The State agency may modify the application processing requirements in § 273.2 of this chapter as necessary to insure prompt delivery of services to eligible households. The following restrictions apply:

(1) *Fee agent processing.* If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. The fee agent shall give the household the maximum amount of time to provide needed verification as long as the five-day processing period is met.

(2) *Application filing date.* An application is considered filed for purposes of timely processing when it is received by an office of the State agency.

(3) *Application processing timeframes.* Eligible households must be provided an opportunity to participate as soon as possible but no later than 30 days after the application is received by an office of the State agency.

(4) *Expedited service.* (i) If the signed application is first submitted by a household to a fee agent, the fee agent shall mail the application to the State agency within 5 days of receipt. If the household is eligible for expedited service, the State agency will mail the coupons no later than the close of business of the second working day following the date the application was received by the State agency.

(ii) If the signed application is submitted directly to the State agency in person by a rural resident or its authorized representative or by mail, the

State agency shall process the application and issue coupons to households eligible for expedited service in accordance with the time standards contained in § 273.2(i)(3) of this chapter.

(iii) If an incomplete application is submitted directly to the State agency by mail, the State agency shall conduct the interview by the first working day following the date the application was received if the fee agent can contact the household or the household can be reached by telephone or radiophone and does not object to this method of interviewing on grounds of privacy. Based on information obtained during the interview, the State agency shall complete the application and process the case. Because of the mailing time in rural areas, the State agency shall not return the completed application to the household for signature. The processing standard shall be calculated from the date the application was filed.

(5) *SSI Joint Processing.* SSA workers shall mail all jointly processed applications to the appropriate State agency office within 5 days of receipt of the application. A jointly processed application shall be considered filed for purposes of timely processing when it is received by an office of the State agency. The household, if determined eligible, shall receive benefits retroactive to the first day of the month in which the jointly processed application was received by the SSA worker.

(6) *Interviews.* The State agency shall interview applicant households in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence. In instances in which an interview cannot be conducted, the State agency may postpone the interview until after the household is certified.

(e) *Determining household eligibility and benefit level.* If a household submits its application to a fee agent, it shall, if eligible, receive benefits retroactive to the date the application is received by the fee agent. If a household submits its application directly to a State agency office, it shall, if determined eligible, receive benefits retroactive to the date the application is received by the State agency.

(f) *Vehicles.* In areas of the State where there are no licensing requirements, snowmobiles and boats used by the household for basic transportation shall be evaluated in accordance with § 273.8(h) of this chapter even though they are unlicensed. Vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

(g) *Reporting changes.* The State agency shall allow the household to choose to report changes either directly to the State agency or to the fee agent. If the household reports the change to the fee agent, the fee agent will mail the change report to the State agency office within two working days of the date of receipt. The household's obligation to report the change will have been met if it submits the change to the fee agent within 10 days of the date the change becomes known to the household. However, for purposes of State agency action for increasing or decreasing benefits, the change will be considered to have been reported when it is received by a State agency office.

(h) *Fair hearings, fraud hearings, and agency conferences.* The State agency shall conduct fair hearings, administrative fraud hearings, and agency conferences with households that wish to contest denial of expedited service in the most efficient manner possible, either by face-to-face contact, telephone, radiophone, or other means of correspondence including written correspondence, in order to meet the respective time standards contained in §§ 273.15 and 273.16 of this chapter.

(i) *Issuance services.* With the approval of FNS, coupons may be mailed on a quarterly or semiannual basis to certain rural areas of Alaska when provisions are not available on a monthly basis. The decision to allow the distribution of coupons in this manner will be made on an annual basis. These areas shall be listed in the State's Plan of Operation. The State agency shall advise households that live in rural areas where quarterly or semiannual allotments are authorized. If, as the result of the issuance of quarterly or semiannual allotments, food coupons are overissued or underissued, the

State agency shall process claim determinations and restore lost benefits.

[Amdt. 162, 45 FR 73003, Nov. 4, 1980, as amended by Amdt. 202, 46 FR 44722, Sept. 4, 1981; Amdt. 215, 47 FR 20741, May 14, 1982. Redesignated and amended by Amdt. 211, 47 FR 53315, 53316, Nov. 26, 1982]

EDITORIAL NOTE: For other FEDERAL REGISTER citations affecting § 272.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 272.8 State income and eligibility verification system.

(a) *General*. (1) State agencies may maintain and use an income and eligibility verification system (IEVS), as specified in this section. By means of the IEVS, State agencies may request wage and benefit information from the agencies identified in this paragraph (a)(1) and use that information in verifying eligibility for and the amount of food stamp benefits due to eligible households. Such information may be requested and used with respect to all household members, including any considered excluded household members as specified in § 273.11(c) of this chapter whenever the SSNs of such excluded household members are available to the State agency. If not otherwise documented, State agencies must obtain written agreements from these information provider agencies affirming that they must not record any information about individual food stamp households and that staff in those agencies are subject to the disclosure restrictions of the information provider agencies and § 272.1(c). The information provider agencies, at a minimum, are:

(i) The State Wage Information Collection Agency (SWICA) which maintains wage information;

(ii) The Social Security Administration (SSA) which maintains information about net earnings from self-employment, wages, and payments of retirement income, which is available pursuant to section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code; and information which is available from SSA regarding Federal retirement, and survivors, disability, SSI and related benefits;

(iii) The IRS from which unearned income information is available pursuant to section 6103(1)(7)(B) of the IRS Code; and

(iv) The agency administering Unemployment Insurance Benefits (UIB) which maintains claim information and any information in addition to information about wages and UIB available from the agency which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(2) State agencies may exchange with State agencies administering certain other programs in the IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefit amounts under the Food Stamp Program and those programs. State agencies may exchange such information with these agencies in other States when they determine that the same objectives are likely to be met. These programs are:

(i) Temporary Assistance for Needy Families;

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under title I, X, or XIV (the adult categories), or title XVI of the Social Security Act.

(3) State agencies must provide information to those administering the Child Support Program (title IV-D of the Social Security Act) and titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(4) Prior to requesting or exchanging information with other agencies, State agencies must execute data exchange agreements with those agencies. The agreements must specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements are not part of the State agency's Plan of Operation.

(b) *Alternate data sources*. A State agency may continue to use income information from an alternate source or

sources to meet any requirement under paragraph (a) of this section.

(c) *Actions on recipient households.* (1) State agency action on information items about recipient households shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2 (f)(9)(iii) and (f)(9)(iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, notices of adverse action.

(2) State agencies must initiate and pursue the actions on recipient households specified in paragraph (c)(1) of this section so that the actions are completed within 45 days of receipt of the information items. Actions may be completed later than 45 days from the receipt of information if:

(i) The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 of this chapter when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraph (c)(1) of this section substantiate an overissuance, State agencies must establish and take actions on claims as specified in § 273.18 of this chapter.

(4) State agencies must use appropriate procedures to monitor the timeliness requirements in paragraph (c)(2) of this section.

(5) Except for the claims actions specified in paragraph (c)(3) of this section, State agencies may exclude from the actions required in paragraph (c) of this section information items pertaining to household members who are participating in one of the other programs listed in paragraph (a)(2) of this section.

(d) *IEVS information and quality control.* The requirements of this section do not relieve the State agency of its responsibility for determining erroneous payments and/or its liability for such payments as specified in part 275 of this chapter (which pertains to quality control) and in guidelines on quality control established under that part.

(e) *Documentation.* The State agency must document, as required by § 273.2(f)(6) of this chapter, information obtained through the IEVS both when an adverse action is and is not instituted.

[65 FR 70192, Nov. 21, 2000]

§ 272.9 Approval of homeless meal providers.

The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency, shall approve establishments serving the homeless upon sufficient evidence, as determined by the agency, that the establishment does in fact serve meals to homeless persons. Where the State food stamp agency identifies another appropriate State or local agency for the purpose of approving establishments serving the homeless, the State food stamp agency will remain responsible for insuring that the provisions of the preceding sentence are effectively carried out. The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency or private nonprofit organization under contract with the State food stamp agency shall execute contracts with restaurants wishing to sell meals in exchange for food stamp benefits to homeless food stamp households. Such contracts shall specify that such meals are to be sold at ''concessional'' (low or reduced) prices and shall also specify the approximate prices which will be charged, or the amount and type of price reduction.

[56 FR 54777, Oct. 23, 1991, as amended at 61 FR 53600, Oct. 15, 1996]

§ 272.10 ADP/CIS Model Plan.

(a) *General purpose and content*—(1) *Purpose.* All State agencies are required to sufficiently automate their food stamp program operations and computerize their systems for obtaining, maintaining, utilizing and transmitting information concerning the

food stamp program. Sufficient automation levels are those which result in effective programs or in cost effective reductions in errors and improvements in management efficiency, such as decreases in program administrative costs. Thus, for those State agencies which operate exceptionally efficient and effective programs, a lesser degree of automation may be considered sufficient than in other State agencies. In order to determine a sufficient level of automation in each State, each State agency shall develop an ADP/CIS plan. FNS may withhold State agency funds under § 276.4(a) for failure to submit an ADP/CIS plan in accordance with the deadlines for submission, for failure to make appropriate changes in their ADP/CIS plan within 60 days of their receipt of FNS comments, or for failure to implement the approved ADP/CIS plan in accordance with the dates specified therein, unless extensions of time or deviations from the plan or schedules have been approved by FNS.

(2) *Content*. In developing their ADP/CIS plans, State agencies shall use one of the following three formats:

(i) State agencies which are sufficiently automated in each area specified in § 272.10(b) may provide a single certification statement that they are sufficiently automated in each area.

(ii) State agencies which are sufficiently automated in some, but not all, areas specified in § 272.10(b) shall submit an ADP/CIS plan which consists of two parts. The first part would be the State agency's certification as to the areas in which they are sufficiently automated. The second part would describe the areas of § 272.10(b) which the State agency has not automated or, in its opinion, has not automated sufficiently and include the State agency's plans for sufficiently automating these areas. State agencies shall include a description of how they intend to automate each area and a timetable for each planned activity, including a consideration of transfers as discussed in paragraph (a)(3) of this section. State agencies which are not planning to automate each of the areas specified § 272.10(b) or which are not already automated in these areas shall provide justification. Any such justification shall include a cost-effectiveness analysis.

(iii) State agencies which are not sufficiently automated in any of the areas specified in § 272.10(b) shall submit an ADP/CIS plan which describes their plans for sufficiently automating each area, including a timetable for each planned activity, and including a consideration of transfers as discussed in paragraph (a)(3) of this section. State agencies which are not planning to automate each of the areas specified in § 272.10(b) or which are not, in their opinion, sufficiently automated in these areas shall provide justification. Any such justification shall include a cost-effectiveness analysis.

(3) *Transfers*. (i) State agencies planning additional automation shall consult with other State agencies and with the appropriate Regional Office to determine whether a transfer or modification of an existing system from another jurisdiction would be more efficient and cost effective than the development of a new system. In assessing the practicability of a transfer, State agencies should consult with other State agencies that have similar characteristics such as whether they are urban or rural, whether they are county or State administered, the geographic size of the States and the size of the caseload.

(ii) State agencies that plan to automate operations using any method other than transfers will need to be able to justify why they are not using transfers. The justification will need to include the results of the consultations with other State agencies, the relative costs of transfer and the system the State agency plans to develop, and the reasons for not using a transfer. Common reasons for not using transfers include: The State agency is required to use a central data processing facility and the (otherwise) transferable system is incompatible with it; the State agency's data base management software is incompatible with the transferable system; the State agency's ADP experts are not familiar with the software/hardware used by the transferable system and acquiring new expertise would be expensive; the transferable system is interactive or uses ''generic''

caseworkers, the receiving State agency does not and it would be expensive to modify the existing system and/or procedures; and transfer would provoke disputes with the State agency's personnel union. State agencies that cite any of these reasons shall not automatically receive approval to develop non-transferred systems. State agencies shall show what efforts were considered to overcome the problems and that those efforts are cost ineffective. This justification will need to be included as part of the Advance Planning Document that the State agency must submit for approval of its proposed system.

(iii) FNS will assist State agencies that request assistance in determining what other States have systems that should be considered as possible transfers.

(b) *Model Plan*. In order to meet the requirements of the Act and ensure the efficient and effective administration of the program, a food stamp system, at a minimum, shall be automated in each of the following program areas in paragraphs (b)(1), Certification, and (b)(2), Issuance Reconciliation and Reporting of this section. The food stamp system must further meet all the requirements in paragraph (b)(3), General, of this section.

(1) *Certification*. (i) Determine eligibility and calculate benefits or validate the eligibility worker's calculations by processing and storing all casefile information necessary for the eligibility determination and benefit computation (including but not limited to all household members' names, addresses, dates of birth, social security numbers, individual household members' earned and unearned income by source, deductions, resources and household size). Redetermine or revalidate eligibility and benefits based on notices of change in households' circumstances;

(ii) Identify other elements that affect the eligibility of household members such as alien status, presence of an elderly person in the household, status of periodic work registration, disqualification actions, categorical eligibility, and employment and training status;

(iii) Provide for an automatic cutoff of participation for households which have not been recertified at the end of their certification period;

(iv) Notify the certification unit (or generate notices to households) of cases requiring Notices of:

(A) Case Disposition,

(B) Adverse Action and Mass Change, and

(C) Expiration;

(v) Prior to certification, crosscheck for duplicate cases for all household members by means of a comparison with food stamp records within the relevant jurisdiction;

(vi) Meet the requirements of the IEVS system of § 272.8. Generate information, as appropriate, to other programs.

(vii) Provide the capability to effect mass changes: Those initiated at the State level, as well as those resulting from changes at the Federal level (eligibility standards, allotments, deductions, utility standards, SSI, TANF, SAA benefits);

(viii) Identify cases where action is pending or follow-up must be pursued, for example, households and verification pending or households containing disqualified individuals or a striker;

(ix) Calculate or validate benefits based on restored benefits or claims collection, and maintain a record of the changes made;

(x) Store information concerning characteristics of all household members;

(xi) Provide for appropriate Social Security enumeration for all required household members; and

(xii) Provide for monthly reporting and retrospective budgeting as required.

(2) *Issuance, reconciliation and reporting*. (i) Generate authorizations for benefits in issuance systems employing ATP's, direct mail, or online issuance and store all Household Issuance Record (HIR) information including: name and address of household, household size, period of certification, amount of allotment, case type (PA or NA), name and address of authorized representative, and racial/ethnic data;

(ii) Prevent a duplicate HIR from being established for presently participating or disqualified households;

(iii) Allow for authorized under- or over-issuance due to claims collection or restored benefits;

(iv) Provide for reconciliation of all transacted authorization documents to the HIR masterfile. This process must incorporate any manually-issued authorization documents, account for any replacement or supplemental authorization documents issued to a household, and identify cases of unauthorized and duplicate participation;

(v) Provide a mechanism allowing for a household's redemption of more than one valid authorization document in a given month;

(vi) Generate data necessary to meet Federal issuance and reconciliation reporting requirements, and provide for the eventual capability of directly transmitting data to FNS including:

(A) Issuance:

(*1*) FNS–259—Summary of mail issuance and replacement;

(*2*) FNS–250—Reconciliation of redeemed ATPs with reported authorized coupon issuance.

(B) Reconciliation: FNS–46—ATP Reconciliation Report.

(vii) Generate data necessary to meet other reporting requirements and provide for the eventual capability of directly transmitting data to FNS, including:

(A) FNS–101—Program participation by race;

(B) FNS–209—Status of claims against households; and

(C) FNS–388—Coupon issuance and participation estimates.

(viii) Allow for sample selection for quality control reviews of casefiles, and for management evaluation reviews;

(ix) Provide for program-wide reduction or suspension of benefits and restoration of benefits if funds later become available and store information concerning the benefit amounts actually issued;

(x) Provide for expedited issuance of benefits within prescribed timeframes;

(xi) Produce and store a participation history covering three (3) year(s) for each household receiving benefits.

(xii) Provide for cutoff of benefits for households which have not been recertified timely; and

(xiii) Provide for the tracking, aging, and collection of recipient claims and preparation of the FNS–209, Status of Claims Against Households report.

(3) *General.* The following functions shall be part of an overall State agency system but need not necessarily be automated:

(i) All activities necessary to meet the various timeliness and data quality requirements established by FNS;

(ii) All activities necessary to coordinate with other appropriate Federal and State programs, such as TANF or SSI;

(iii) All activities necessary to maintain the appropriate level of confidentiality of information obtained from applicant and recipient households;

(iv) All activities necessary to maintain the security of automated systems to operate the Food Stamp Program;

(v) Implement regulatory and other changes including a testing phase to meet implementation deadlines, generally within 90 days;

(vi) Generate whatever data is necessary to provide management information for the State agency's own use, such as caseload, participation and actions data;

(vii) Provide support as necessary for the State agency's management of Federal funds relative to Food Stamp Program administration, generate information necessary to meet Federal financial reporting requirements;

(viii) Routine purging of case files and file maintenance, and

(ix) Provide for the eventual direct transmission of data necessary to meet Federal financial reporting requirements.

[Amdt. 284, 52 FR 35226, Sept. 18, 1987, as amended by Amdt. 356, 59 FR 29713, June 9, 1994]

§ 272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

(a) *General.* A State agency may participate in the SAVE Program established by the Immigration and Naturalization Service (INS), in order to verify the validity of documents provided by aliens applying for food stamp

benefits with the central data files maintained by INS.

(b) *Agreements.* (1) Prior to implementing the SAVE Program, the State agency shall execute an agreement with INS. The agreement shall specify the information to be exchanged and the procedures which will be used in the exchange of information.

(2) The agreement shall cover at least the following areas:

(i) Identification of positions of all agency officials with authority to request immigration status information;

(ii) Identification and location of all SAVE access points covered by the agreement;

(iii) For automated SAVE verification through access to the Alien Status Verification Index (ASVI), a description of the access method and procedures;

(iv) For secondary verification as described in paragraph (d) of this section, the locations of INS District Offices to which verification requests will be directed;

(v) The safeguards limiting release or redisclosure as required by State or Federal law or regulation as discussed in § 272.1(c) and as may be required by other guidelines published by the Secretary; and

(vi) Reimbursement or billing agreements for ongoing SAVE operational costs, as well as any developmental costs associated with establishing access to the ASVI database.

(c) *Use of data.* The State agency shall use information obtained through the SAVE Program only for the purposes of:

(1) Verifying the validity of documentation of alien status presented by an applicant;

(2) Verifying an individual's eligibility for benefits;

(3) Investigating whether participating households received benefits to which they were not entitled, if an individual was previously certified to receive benefits on the basis of eligible alien status; and

(4) Assisting in or conducting administrative disqualification hearings, or criminal or civil prosecutions based on receipt of food stamp benefits to which participating households were not entitled.

(d) *Method of verification.* The State agency may verify the documentation presented by an alien applicant by completing INS Form G–845 and submitting photocopies of such documentation to the INS for verification as described in § 273.2(f)(10) of this chapter. In States that participate in SAVE, the State agency must use this secondary verification procedure whenever the applicant-individual's documented alien status has not been verified through automated access to the ASVI or significant discrepancies exist between the data on the ASVI and the information provided by the alien applicant.

(e) *Plan of operation.* The requirements for participation in the SAVE Program shall be included in an attachment to the State agency's Plan of Operation as required in § 272.2(d). This document shall include a description of procedures used, method of access and the agreement specified in paragraph (b) of this section, including steps taken to meet requirements of limiting disclosure and safeguarding of information obtained from food stamp households as specified in § 272.1.

[53 FR 39440, Oct. 7, 1988, as amended at 65 FR 33439, May 24, 2000; Amdt. 388, 65 FR 70193, Nov. 21, 2000]

§ 272.12 Computer matching requirements.

(a) *General purpose.* The Computer Matching and Privacy Protection Act (CMA) of 1988, as amended, addresses the use of information from computer matching programs that involve a Federal System of Records. Each State agency participating in a computer matching program shall adhere to the provisions of the CMA if it uses an FNS system of records for the following purposes:

(1) Establishing or verifying initial or continuing eligibility for Federal Benefit Programs;

(2) Verifying compliance with either statutory or regulatory requirements of the Federal Benefit Programs; or

(3) Recouping payments or delinquent debts under such Federal Benefit Programs.

(b) *Matching agreements.* State agencies must enter into written agreements with USDA/FNS, consistent with

5 U.S.C. 552a(o) of the CMA, in order to participate in a matching program involving a USDA/FNS Federal system of records.

(c) *Use of computer matching information.* (1) A State agency shall not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or recipient based on information produced by a Federal computer matching program that is subject to the requirements of the CMA, unless:

(i) The information has been independently verified by the State agency (in accordance with the independent verification requirements set out in the State agency's written agreement as required by paragraph (b) of this section) and a Notice of Adverse Action or Notice of Denial has been sent to the household, in accordance with § 273.2(f); or

(ii) The Federal agency's Data Integrity Board has waived the two-step independent verification and notice requirement and notice of adverse action has been sent to the household, in accordance with § 273.2(f) of this chapter.

(2) A State agency which receives a request for verification from another State agency, or from FNS pursuant to the provisions of § 273.16(i) of this chapter shall, within 20 working days of receipt, respond to the request by providing necessary verification (including copies of appropriate documentation and any statement that an individual has asked to be included in their file).

[77 FR 48055, Aug. 13, 2012]

§ 272.13 Prisoner verification system (PVS).

(a) *General.* Each State agency shall establish a system to monitor and prevent individuals who are being held in any Federal, State, and/or local detention or correctional institutions for more than 30 days from being included in a SNAP household.

(b) *Use of match data.* State prisoner verification systems shall provide for:

(1) The comparison of identifying information about each household member, excluding minors, as that term is defined by each State, and one-person households in States where a face-to-face interview is conducted, against identifying information about inmates of institutions at Federal, State and local levels;

(2) The reporting of instances where there is a match;

(3) The independent verification of match hits to determine their accuracy;

(4) Notice to the household of match results;

(5) An opportunity for the household to respond to the match prior to an adverse action to deny, reduce, or terminate benefits; and

(6) The establishment and collections of claims as appropriate.

(c) *Match frequency.* State agencies shall make a comparison of match data for adult household members at the time of application and at recertification. States that opt to obtain and use prisoner information collected under Section 1611(e)(1)(I)(i)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)(i)(I)) shall be considered in compliance with this section. States shall enter into a computer matching agreement with the SSA under authority contained in 42 U.S.C. 405(r)(3).

[77 FR 48055, Aug. 13, 2012]

§ 272.14 Deceased matching system.

(a) *General.* Each State agency shall establish a system to verify and ensure that benefits are not issued to individuals who are deceased.

(b) *Data source.* States shall use the SSA's Death Master File, obtained through the State Verification and Exchange System (SVES) and enter into a computer matching agreement with SSA pursuant to authority to share data contained in 42 U.S.C. 405(r)(3).

(c) *Use of match data.* States shall provide a system for:

(1) Comparing identifiable information about each household member against information from databases on deceased individuals. States shall make the comparison of matched data at the time of application and no less frequently than once a year.

(2) The reporting of instances where there is a match;

(3) The independent verification of match hits to determine their accuracy;

(4) Notice to the household of match results;

(5) An opportunity for the household to respond to the match prior to an adverse action to deny, reduce, or terminate benefits; and

(6) The establishment and collection of claims as appropriate.

[77 FR 48055, Aug. 13, 2012]

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

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AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 273 are contained in § 271.8.

Subpart A—General Rules

§ 273.1 Household concept.

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or

(3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(b) *Special household requirements*—(1) *Required household combinations.* The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.

(i) Spouses;

(ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and

(iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult.

(2) *Elderly and disabled persons.* Notwithstanding the provisions of paragraph (a) of this section, an otherwise eligible member of a household who is 60 years of age or older and is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or a non disease-related, severe, permanent disability may be considered, together with his or her spouse (if living there), a separate household from the others with whom the individual lives. Separate household status under this provision must not be granted when the income of the others with whom the elderly disabled individual resides (excluding the income of the elderly and disabled individual and his or her spouse) exceeds 165 percent of the poverty line.

(3) *Boarders.* (i) Residents of a commercial boarding house, regardless of the number of residents, are not eligible to participate in the Program. A commercial boarding house is an establishment licensed to offer meals and lodging for compensation. It does not include any of the entities listed in paragraph (b)(7)(vii) of this section. In project areas without licensing requirements, a commercial boarding house is a commercial establishment that offers meals and lodging for compensation with the intent of making a profit.

(ii) All other individuals or groups of individuals paying a reasonable amount for meals or meals and lodging must be considered boarders and are not eligible to participate in the Program independently of the household providing the board. Such individuals or groups of individuals may participate, along with a spouse or children living with them, as members of the household providing the boarder services, only at the request of the household providing the boarder services. An individual paying less than a reasonable amount for board must not be considered a boarder but must be considered, along with a spouse or children living with him or her, as a member of the household providing the board.

(A) For individuals whose board arrangement is for more than two meals per day, ''reasonable compensation'' must be an amount that equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household.

(B) For individuals whose board arrangement is for two meals or less per day, ''reasonable compensation'' must be an amount that equals or exceeds two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

(iii) Boarders must not be considered to be residents of an institution as outlined in paragraph (b)(7)(vii) of this section.

(4) *Foster care individuals.* Individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program must be considered to be boarders. They cannot participate in the Program independently of the household providing the foster care services. Such foster care individuals may participate, along with a spouse or children living with them, as members of the household providing the foster care services, only at the request of the household providing the foster care.

(5) *Roomers.* Individuals to whom a household furnishes lodging for compensation, but not meals, may participate as separate households. Persons described in paragraph (b)(1) of this section must not be considered roomers.

(6) *Live-in attendants.* A live-in attendant may participate as a separate household. Persons described in paragraph (b)(1) of this section must not be considered live-in attendants.

(7) Ineligible household members. The following persons are not eligible to participate as separate households or as a member of any household:

(i) Ineligible aliens and students as specified in §§ 273.4 and 273.5, respectively;

(ii) SSI recipients in ''cash-out'' States as specified in § 273.20;

(iii) Individuals disqualified for noncompliance with the work requirements of § 273.7;

(iv) Individuals disqualified for failure to provide an SSN as specified in § 273.6;

(v) Individuals disqualified for an intentional Program violation as specified in § 273.16; and

(vi) Residents of an institution, with some exceptions. Individuals must be

considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Exceptions to this requirement include only the individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) of this section. The individuals listed in paragraphs (b)(7)(vii)(A) through (b)(7)(vii)(E) can participate in the Program and must be treated as separate households from the others with whom they reside, subject to the mandatory household combination requirements of paragraph (b)(1) of this section, unless otherwise stated:

(A) Individuals who are residents of federally subsidized housing for the elderly;

(B) Individuals who are narcotic addicts or alcoholics and reside at a facility or treatment center for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program. This includes the children but not the spouses of such persons who live with them at the treatment center or facility;

(C) Individuals who are disabled or blind and are residents of group living arrangements;

(D) Individual women or women with their children who are temporarily residing in a shelter for battered women and children; and

(E) Individuals who are residents of public or private nonprofit shelters for homeless persons.

(vii) Individuals who are ineligible under §273.11(m) because of a drug-related felony conviction.

(viii) At State agency option, individuals who are disqualified in another assistance program in accordance with §273.11(k).

(ix) Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under §273.11(n).

(x) Individuals disqualified for failure to cooperate with child support enforcement agencies in accordance with §273.11(o) or (p), or for being delinquent in any court-ordered child support obligation in accordance with §273.11(q).

(xi) Persons ineligible under §273.24, the time limit for able-bodied adults.

(c) *Unregulated situations.* For situations that are not clearly addressed by the provisions of paragraphs (a) and (b) of this section, the State agency may apply its own policy for determining when an individual is a separate household or a member of another household if the policy is applied fairly, equitably and consistently throughout the State.

(d) *Head of household.* (1) A State agency shall not use the head of household designation to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits. When designating the head of household, the State agency shall allow the household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult household members agree to the selection. The State agency shall permit such households to select their head at each certification action or whenever there is a change in household composition. The State agency shall provide written notice to all households at the time of application and as otherwise appropriate that specifies the household's right to select its head of household in accordance with this paragraph. The written notice shall identify which households have the option to select their head of household, the circumstances under which a household may change its designation of head of household, and how such changes must be reported to the State agency. If all adult household members do not agree to the selection or decline to select an adult parent as the head of household, the State agency may designate the head of household or permit the household to make another selection. In no event shall the household's failure to select an adult parent of children or an adult who has parental control over children as the head of household delay the certification or result in the denial of benefits of an otherwise eligible household. For households that do not consist of

adult parents and children or adults who have parental control of children living in the household, the State agency shall designate the head of household or permit the household to do so.

(2) For purposes of failure to comply with the work requirements of § 273.7, the head of household shall be the principal wage earner unless the household has selected an adult parent of children as specified in paragraph (d)(1) of this section. The principal wage earner shall be the household member (including excluded members) who is the greatest source of earned income in the two months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under title IV of the Social Security Act, or in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation), or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household unless the person is an adult parent of children as specified in § 273.1(d)(1) and the household elects to designate the adult parent as its head of household. If there is no principal source of earned income in the household, the household member, documented in the casefile as the head of the household at the time of the violation, shall be considered the head of household. The designation of head of household through the circumstances of this paragraph shall take precedence over a previous designation of head of household at least until the period of ineligibility is ended.

(e) *Strikers*. Households with a striking member are not eligible to participate in the Program, unless the household was eligible for benefits the day before the strike and is otherwise eligible at the time of application. A striker must be anyone involved in a strike or concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, must not be deemed to be a striker. Further, an individual who goes on strike but is exempt from work registration under § 273.7(b) the day before the strike, other than those exempt solely on the grounds that they are employed, must not be deemed to be a striker. Also, persons such as truck drivers who cannot do their jobs because the strike has left them with nothing to deliver, and employees who are not part of the bargaining unit and do not want to cross the picket line for fear of personal injury or death, must not be deemed to be strikers.

(1) Pre-strike eligibility must be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(2) Eligibility at the time of application must be determined by comparing the striking member's income before the strike to the striker's current income and adding the higher of the two to the current income of non-striking members during the month of application. If the household is eligible, the higher income figure must also be used in determining the household's benefits.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 273.2 Office operations and application processing.

(a) *Operation of food stamp offices and processing of applications*—(1) *Office operations*. State agencies must establish procedures governing the operation of food stamp offices that the State agency determines best serve households in the State, including households with special needs, such as, but not limited to, households with elderly or disabled members, households in rural areas

with low-income members, homeless individuals, households residing on reservations, households with adult members who are not proficient in English, and households with earned income (working households). The State agency must provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program. The State agency cannot, as a condition of eligibility, impose additional application or application processing requirements. The State agency must have a procedure for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities. The State agency must base food stamp eligibility solely on the criteria contained in the Act and this part.

(2) *Application processing*. The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency must act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. The State agency must make expedited service available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) *Food Stamp application form*—(1) *Content*. Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

(iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application, including the information concerning citizenship and alien status of the members applying for benefits;

(iv) A place on the front page of the application where the applicant can write his/her name, address, and signature.

(v) In plain and prominent language on or near the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative. Regardless of the type of system the State agency uses (paper or electronic), it must provide a means for households to immediately begin the application process with name, address and signature;

(vi) In plain and prominent language on or near the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section;

(vii) In plain and prominent language on or near the front page of the application, notification that benefits are provided from the date of application; and

(viii) The following nondiscrimination statement on the application itself even if the State agency uses a joint application form:

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability.

"To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer."; and

(ix) For multi-program applications, contain language which clearly affords applicants the option of answering only those questions relevant to the program or programs for which they are applying.

(2) *Income and eligibility verification system (IEVS)*. If the State agency

chooses to use IEVS in accordance with paragraph (f)(9) of this section, it must notify all applicants for food stamp benefits at the time of application and at each recertification through a written statement on or provided with the application form that information available through IEVS will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. The regulations at § 273.2(f)(4)(ii) govern the use of collateral contacts. The State agency must also notify all applicants on the application form that the alien status of applicant household members may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information received from INS may affect the household's eligibility and level of benefits.

(3) *Jointly processed cases.* If a State agency has a procedure that allows applicants to apply for the food stamp program and another program at the same time, the State agency shall notify applicants that they may file a joint application for more than one program or they may file a separate application for food stamps independent of their application for benefits from any other program. All food stamp applications, regardless of whether they are joint applications or separate applications, must be processed for food stamp purposes in accordance with food stamp procedural, timeliness, notice, and fair hearing requirements. No household shall have its food stamp benefits denied solely on the basis that its application to participate in another program has been denied or its benefits under another program have been terminated without a separate determination by the State agency that the household failed to satisfy a food stamp eligibility requirement. Households that file a joint application for food stamps and another program and are denied benefits for the other program shall not be required to resubmit the joint application or to file another application for food stamps but shall have its food stamp eligibility determined based on the joint application in accordance with the food stamp processing time frames from the date the joint application was initially accepted by the State agency.

(4) *Privacy Act statement.* As a State agency, you must notify all households applying and being recertified for food stamp benefits of the following:

(i) The collection of this information, including the social security number (SSN) of each household member, is authorized under the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2036. The information will be used to determine whether your household is eligible or continues to be eligible to participate in the Food Stamp Program. We will verify this information through computer matching programs. This information will also be used to monitor compliance with program regulations and for program management.

(ii) This information may be disclosed to other Federal and State agencies for official examination, and to law enforcement officials for the purpose of apprehending persons fleeing to avoid the law.

(iii) If a food stamp claim arises against your household, the information on this application, including all SSNs, may be referred to Federal and State agencies, as well as private claims collection agencies, for claims collection action.

(iv) Providing the requested information, including the SSN of each household member, is voluntary. However, failure to provide an SSN will result in the denial of food stamp benefits to each individual failing to provide an SSN. Any SSNs provided will be used and disclosed in the same manner as SSNs of eligible household members.

(c) *Filing an application*—(1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application. The State agency must provide households that complete an on-line electronic application in person at the food stamp office the opportunity to review the information that has been

recorded electronically and must provide them with a copy of that information for their records. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. State agencies must document the date the application was filed by recording the date of receipt at the food stamp office. When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application that the State agency must record is the date of release of the applicant from the institution. The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with § 273.1(e)(2). Residents of public institutions who apply for foods stamps prior to their release from the institution shall be certified in accordance with § 273.2(g)(1) or § 273.2(i)(3)(i), as appropriate. Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative. State agencies shall document the date the application was filed by recording on the application the date it was received by the food stamp office. When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by the State agency on the food stamp application is the date of release of the applicant from the institution.

(2) *Contacting the food stamp office.* (i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance or expresses concerns which indicate food insecurity. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting other requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the

certification office shall mail the application to the appropriate office on the same day, or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded.

(iii) In State agencies that elect to have Statewide residency, as provided in § 273.3, the application processing timeframes begin when the application is filed in any food stamp office in the State.

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form. If the State agency maintains a Web page, it must make the application available on the Web page in each language in which the State agency makes a printed application available. The State agency must provide on the Web page the addresses and phone numbers of all State food stamp offices and a statement that the household should return the application form to its nearest local office. The applications must be accessible to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, Public Law 93–112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–516, 29 U.S.C. 794. Regardless of the type of system the State agency uses (paper or electronic), the State agency must provide a means for applicants to immediately begin the application process with name, address and signature.

(4) *Notice of right to file.* The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing on the application form.

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter. At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(6) *Withdrawing application.* The household may voluntarily withdraw its application at any time prior to the determination of eligibility. The State agency shall document in the case file the reason for withdrawal, if any was stated by the household, and that contact was made with the household to confirm the withdrawal. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household

may reapply but shall not be determined eligible until it cooperates with the State agency. The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

(2) *Cooperation with QC Reviewer*. In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with §§ 275.3(c)(5) and 275.12(g)(1)(ii) of this chapter, the household may reapply, but shall not be determined eligible until it cooperates with the quality control reviewer. If a household terminated for refusal to cooperate with a State quality control reviewer reapplies after 125 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(ix) of this section. If a household terminated for refusal to cooperate with a Federal quality control reviewer reapplies after nine months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(ix) of this section. In the event that one or more household members no longer resides with a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to household of the person(s) who refused to cooperate. If the State agency is unable to determine which household member(s) refused to cooperate, the State agency shall determine the household to which the penalty shall apply.

(e) *Interviews*. (1) Except for households certified for longer than 12 months, and except as provided in paragraph (e)(2) of this section, households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter. State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. Interviews may be conducted at the food stamp office or other mutually acceptable location, including a household's residence. If the interview will be conducted at the household's residence, it must be scheduled in advance with the household. If a household in which all adult members are elderly or disabled is certified for 24 months in accordance with § 273.10(f)(1), or a household residing on a reservation is required to submit monthly reports and is certified for 24 months in accordance with § 273.10(f)(2), a face-to-face interview is not required during the certification period. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer must not simply review the information that appears on the application, but must explore and resolve with the household unclear and incomplete information. The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. The interviewer must conduct the interview as an official and confidential discussion of household circumstances. The State agency must

protect the applicant's right to privacy during the interview. Facilities must be adequate to preserve the privacy and confidentiality of the interview.

(2) The State agency must notify the applicant that it will waive the face-to-face interview required in paragraph (e)(1) of this section in favor of a telephone interview on a case-by-case basis because of household hardship situations as determined by the State agency. These hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. The State agency must document the case file to show when a waiver was granted because of a hardship. The State agency may opt to waive the face-to-face interview in favor of a telephone interview for all households which have no earned income and all members of the household are elderly or disabled. Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household which requests one. The State agency has the option of conducting a telephone interview or a home visit that is scheduled in advance with the household if the office interview is waived.

(i) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where documentary verification would normally be provided.

(ii) Waiver of the face-to-face interview may not affect the length of the household's certification period.

(3) The State agency must schedule an interview for all applicant households who are not interviewed on the day they submit their applications. To the extent practicable, the State agency must schedule the interview to accommodate the needs of groups with special circumstances, including working households. The State agency must schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. The State agency must notify each household that misses its interview appointment that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day application processing period, the State agency must schedule a second interview. The State agency may not deny a household's application prior to the 30th day after application if the household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, the State agency must issue prorated benefits from the date of application.

(f) *Verification*. Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification. Paragraph (i)(4) of this section contains verification procedures for expedited service cases.

(1) *Mandatory verification*. State agencies shall verify the following information prior to certification for households initially applying:

(i) *Gross nonexempt income*. Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Alien eligibility*. (A) The State agency must verify the eligible status of applicant aliens. If an alien does not wish the State agency to contact INS to verify his or her immigration status, the State agency must give the household the option of withdrawing its application or participating without that member. The Department of Justice (DOJ) Interim Guidance On Verification of Citizenship, Qualified Alien Status and Eligibility Under

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Interim Guidance) (62 FR 61344, November 17, 1997) contains information on acceptable documents and INS codes. State agencies should use the Interim Guidance until DOJ publishes a final rule on this issue. Thereafter, State agencies should consult both the Interim Guidance and the DOJ final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the verification of alien eligibility. As provided in §273.4, the following information may also be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was age 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. The State agency must also verify these factors, if applicable to the alien's eligibility. The SSA Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. However, the QCHS may not show all qualifying quarters. For instance, SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both these cases, the individual, rather than SSA, would need to provide the evidence needed to verify the quarters.

(B) An alien is ineligible until acceptable documentation is provided unless:

(*1*) The State agency has submitted a copy of a document provided by the household to INS for verification. Pending such verification, the State agency cannot delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status; or

(*2*) The applicant or the State agency has submitted a request to SSA for information regarding the number of quarters of work that can be credited to the individual, SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. If SSA indicates that the number of qualifying quarters that can be credited is under investigation, the State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

(*3*) The applicant or the State agency has submitted a request to a Federal agency for verification of information which bears on the individual's eligible alien status. The State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

(C) The State agency must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity must be at least 10 days from the date of the State agency's request for an acceptable document. When the State agency fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

(iii) *Utility expenses.* The State agency shall verify a household's utility expenses if the household wishes to claim expenses in excess of the State agency's utility standard and the expense would actually result in a deduction. If the household's actual utility expenses cannot be verified before the 30 days allowed to process the application expire, the State agency shall use the standard

utility allowance, provided the household is entitled to use the standard as specified in § 273.9(d). If the household wishes to claim expenses for an unoccupied home, the State agency shall verify the household's actual utility expenses for the unoccupied home in every case and shall not use the standard utility allowance.

(iv) *Medical expenses*. The amount of any medical expenses (including the amount of reimbursements) deductible under § 273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable.

(v) *Social security numbers*. The State agency shall verify the social security number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the IEVS described in § 272.8. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS–5, Application for a Social Security Number, to the SSA in accordance with procedures in § 273.6. A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

(vi) *Residency*. The residency requirements of § 273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

(vii) *Identity*. The identity of the person making application shall be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. Identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, a driver's license, a work or school ID, an ID for health benefits or for another assistance or social services program, a voter registration card, wage stubs, or a birth certificate. Any documents which reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(viii) *Disability*. (A) The State agency shall verify disability as defined in § 271.2 as follows:

(*1*) For individuals to be considered disabled under paragraphs (2), (3) and (4) of the definition, the household shall provide proof that the disabled individual is receiving benefits under titles I, II, X, XIV or XVI of the Social Security Act.

(*2*) For individuals to be considered disabled under paragraph (6) of the definition, the household must present a statement from the Veterans Administration (VA) which clearly indicates that the disabled individual is receiving VA disability benefits for a service-connected or non-service-connected disability and that the disability is rated as total or paid at the total rate by VA.

(*3*) For individuals to be considered disabled under paragraphs (7) and (8) of the definition, proof by the household that the disabled individual is receiving VA disability benefits is sufficient verification of disability.

(*4*) For individuals to be considered disabled under paragraphs (5) and (9) of the definition, the State agency shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under paragraphs (5) and (9) of the definition.

(*5*) For individuals to be considered disabled under paragraph (10) of the definition, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board *and* has been determined to qualify for Medicare.

(*6*) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

(B) For disability determinations which must be made relevant to the provisions of § 273.1(a)(2)(ii), the State agency shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious to the caseworker that the individual is unable to purchase and prepare meals because he/she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious to the caseworker, he/she shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician's/psychologist's opinion) is unable to purchase and prepare meals because he/she suffers from one of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he/she suffers from some other severe, permanent physical or mental disease or nondisease-related disability. The elderly and disabled individual (or his/her authorized representative) shall be responsible for obtaining the cooperation of the individuals with whom he/she resides in providing the necessary income information about the others to the State agency for purposes of this provision.

(ix) State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

(x) *Household composition*. State agencies shall verify factors affecting the composition of a household, if questionable. Individuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for

determining separateness shall be responsible for proving a claim of separateness (at the State agency's request) in accordance with the provisions of § 273.2(f)(1)(viii).

(xi) *Students.* If a person claims to be physically or mentally unfit for purposes of the student exemption contained in § 273.5(b)(2) and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(xii) *Legal obligation and actual child support payments.* The State agency shall obtain verification of the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. State agencies may and are strongly encouraged to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) automated data files. For households that pay their child support exclusively through their State CSE agency, the State agency may use information provided by that agency in determining a household's legal obligation to pay child support, the amount of its obligation and amount the household has actually paid. A household would not have to provide additional verification unless it disagrees with the data presented by the State CSE agency. Before the State agency may use the CSE agency's information, the household must sign a statement authorizing release of the household's child support payment records to the State agency. State agencies that choose to rely on information provided by their State CSE agency in accordance with this paragraph (f)(1)(xii) must specify in their State plan of operation that they have selected this option. The State agency shall give the household an opportunity to resolve any discrepancy between household verification and CSE records in accordance with paragraph (f)(9) of this section.

(xiii) [Reserved]

(xiv) *Additional verification for able-bodied adults subject to the time limit*—(A) *Hours worked.* For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

(B) *Countable months in another state.* For individuals subject to the food stamp time limit of § 273.24, the State agency must verify the number of countable months (as defined in § 273.24(b)(1)) an individual has used in another State if there is an indication that the individual participated in that State. The normal processing standards of 7 CFR 273.2(g) apply. The State agency may accept another State agency's assertion as to the number of countable months an individual has used in another State.

(2) *Verification of questionable information.* (i) The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision.

(ii) If a member's citizenship or status as a non-citizen national is questionable, the State agency must verify the member's citizenship or non-citizen national status in accordance with attachment 4 of the DOJ Interim Guidance. After DOJ issues final rules, State agencies should consult both the Interim Guidance and the final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter

should control the eligibility determination. The State agency must accept participation in another program as acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the household cannot obtain the forms of verification suggested in attachment 4 of the DOJ Interim Guidance and the household can provide a reasonable explanation as to why verification is not available, the State agency must accept a signed statement, under penalty of perjury, from a third party indicating a reasonable basis for personal knowledge that the member in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud. Absent verification or third party attestation of U.S. citizenship or non-citizen national status, the member whose citizenship or non-citizen national status is in question is ineligible to participate until the issue is resolved. The member whose citizenship or non-citizen national status is in question will have his or her income and resources considered available to any remaining household members as set forth in § 273.11(c).

(3) *State agency options*. In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any other factor which affects household eligibility or allotment level, including household size where not questionable. Such verification may be required Statewide or throughout a project area, but shall not be imposed on a selective, case-by-case basis on particular households.

(i) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, shall not apply in those offices of the Social Security Administration (SSA) which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(ii) If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(4) *Sources of verification*—(i) *Documentary evidence*. State agencies shall

use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified.

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification. When talking with collateral contacts, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for food stamps, nor should they disclose any information supplied by the household, especially information that is protected by § 273.1(c), or suggest that the household is suspected of any wrong doing.

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household. Home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Simply because a household fits a profile of an error-prone household does not constitute lack of verification. State agencies shall assist households in obtaining sufficient verification in accordance with paragraph (c)(5) of this section.

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

(v) *Homeless households.* Homeless households claiming actual shelter expenses or those with extremely low shelter costs may provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

(5) *Responsibility of obtaining verification*. (i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency must assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, by facsimile or other electronic device, or through an authorized representative. The State agency must not require the household to present verification in person at the food stamp office. The State agency must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit in accordance with paragraph (f)(4) of this section. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation*. Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(7) *State Data Exchange and Beneficiary Data Exchange*. The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

(8) *Verification subsequent to initial certification*—(i) *Recertification* (A) At recertification the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50. Previously unreported medical expenses, actual utility expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income if the source has not changed and if the amount is unchanged or has changed by $50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. For households eligible for the child support deduction or exclusion, the State agency may use information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually

paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to use information provided by their State CSE agency in accordance with this paragraph (f)(8)(i)(A) must specify in their State plan of operation that they have selected this option. For all other households eligible for the child support deduction or exclusion, the State agency shall require the household to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

(B) Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

(C) For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

(D) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

(ii) *Changes*. Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income if the source has not changed and if the amount has changed by $50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses or actual utility expenses which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(9) *Optional use of IEVS*. (i) The State agency may obtain information through IEVS in accordance with procedures specified in § 272.8 of this chapter and use it to verify the eligibility and benefit levels of applicants and participating households.

(ii) The State agency may access data through the IEVS provided the disclosure safeguards and data exchange agreements required by part 272 are satisfied.

(iii) The State agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtain through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA, and TANF benefit information and UIB information obtained from the agencies administering those programs. If the State agency has information that the IEVS-obtained information about a particular household is questionable, this information shall be considered unverified upon receipt and the State agency shall take action as specified in paragraph (f)(9)(iv) of this section.

(iv) Except as noted in this paragraph, prior to taking action to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered unverified upon receipt, State agencies shall independently verify the information. Such unverified information is unearned income information from IRS, wage information from SSA and SWICAs, and questionable IEVS information discussed in paragraph (f)(9)(iii) of this section. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred. Except with respect to unearned income information from IRS, if a State agency has information

which indicates that independent verification is not needed, such verification is not required.

(v) The State agency shall obtain independent verification of unverified information obtained from IEVS by means of contacting the household and/or the appropriate income, resource or benefit source. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within 10 days. If the household fails to respond in a timely manner, the State agency shall send it a notice of adverse action as specified in §273.13. The State agency may contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, the State agency shall properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

(10) *Optional use of SAVE.* Households are required to submit documents to verify the immigration status of applicant aliens. State agencies that verify the validity of such documents through the INS SAVE system in accordance with §272.11 of this chapter must use the following procedures:

(i) The State agency shall provide an applicant alien with a reasonable opportunity to submit acceptable documentation of their eligible alien status prior to the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. An alien who has been given a reasonable opportunity to submit acceptable documentation and has not done so as of the 30th day following the date of application shall not be certified for benefits until acceptable documentation has been submitted. However, if the 10-day reasonable opportunity period provided by the State agency does not lapse before the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(ii) The written consent of the alien applicant shall not be required as a condition for the State agency to contact INS to verify the validity of documentation.

(iii) State agencies which access the ASVI database through an automated access shall also submit INS Form G–845, with an attached photocopy of the alien's document, to INS whenever the initial automated access does not confirm the validity of the alien's documentation or a significant discrepancy exists between the data provided by the ASVI and the information provided by the applicant. Pending such responses from either the ASVI or INS Form G–845, the State agency shall not delay, deny, reduce, or terminate the alien's eligibility for benefits on the basis of the individual's alien status.

(iv) If the State agency determines, after complying with the requirements of this section, that the alien is not in an eligible alien status, the State agency shall take action, including proper notices to the household, to terminate, deny or reduce benefits. The State agency shall provide households the opportunity to request a fair hearing under §273.15 prior to any adverse action.

(v) The use of SAVE shall be documented in the casefile or other agency records. When the State agency is waiting for a response from SAVE, agency records shall contain either a notation showing the date of the State agency's transmission or a copy of the INS Form G–845 sent to INS. Once the SAVE response is received, agency records shall show documentation of the ASVI Query Verification Number or contain a copy of the INS-annotated Form G–845. Whenever the response from automated access to the ASVI directs the eligibility worker to initiate secondary verification, agency records shall show documentation of the ASVI Query Verification Number and contain a copy of the INS Form G–845.

(11) *Use of disqualification data.* (i) Pursuant to §273.16(i), information in the disqualified recipient database will be available for use by any State agency that executes a computer matching agreement with FNS. The State agency

shall use the disqualified recipient database for the following purposes:

(A) Ascertain the appropriate penalty to impose based on past disqualifications in a case under consideration;

(B) Conduct matches as specified in § 273.16 on:

(*1*) Program application information prior to certification and for a newly added household member whenever that might occur; and

(*2*) The current recipient caseload at the time of recertification for a period of 1 year after the implementation date of this match. State agencies do not need to include minors, as that term is defined by each State.

(*3*) States having the ability to conduct a one-time match of their entire active caseload against active cases from the disqualified recipient database may do so and be exempted from the 1-year requirement to conduct matches at recertification.

(ii) State agencies shall not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant, or SNAP recipient, based on disqualified recipient match results unless the match information has been independently verified. The State agency shall provide to an applicant, or recipient, an opportunity to contest any adverse disqualified recipient match result pursuant to the provisions of § 273.13.

(iii) Independent verification shall take place separate from and prior to issuing a notice of adverse action—a two-step process. Independent verification for disqualification purposes means contacting the applicant or recipient household and/or the State agency that originated the disqualification record immediately to obtain corroborating information or documentation to support the reported disqualification information in the intentional Program violation database.

(A) Documentation may be in any form deemed appropriate and legally sufficient by the State agency considering the adverse action. Such documentation may include, but shall not be limited to, electronic or hard copies of court decisions, administrative disqualification hearing determinations, signed disqualification consent agreements or administrative disqualification hearing waivers.

(B) A State may accept a verbal or written statement from another State agency attesting to the existence of the documentation listed in paragraph (f)(11)(iii)(A) of this section.

(C) A State may accept a verbal or written statement from the household affirming the accuracy of the disqualification information if such a statement is properly documented and included in the case record.

(D) If a State agency is not able to provide independent verification because of a lack of supporting documentation, the State agency shall so advise the requesting State agency or FNS, as appropriate, and shall take immediate action to remove the unsupported record from the disqualified recipient database in accordance with § 273.16(i)(6).

(iv) Once independent verification has been received, the requesting State agency shall review and immediately enter the information into the case record and send the appropriate notice(s) to the record subject and any remaining members of the record subject's SNAP household.

(v) Information from the disqualified recipient database is subject to the disclosure provisions in § 272.1(c) of this chapter and the routine uses described in the most recent ''Notice of Revision of Privacy Act System of Records'' published in the FEDERAL REGISTER.

(g) *Normal processing standard*—(1) *Thirty-day processing*. The State agency shall provide eligible households that complete the initial application process an opportunity to participate (as defined in § 274.2(b)) as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution in accordance with § 273.1(e)(2). An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative. Households entitled to expedited processing are specified in paragraph (i) of

this section. For residents of public institutions who apply for food stamps prior to their release from the institution in accordance with §273.1(e)(2), the State agency shall provide an opportunity to participate as soon as possible, but not later than 30 calendar days from the date of release of the applicant from the institution.

(2) *Combined allotments*. Households which apply for initial month benefits (as described in §273.10(a)) after the 15th of the month, are processed under normal processing timeframes, have completed the application process within 30 days of the date of application, and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, may be issued a combined allotment at State agency option which includes prorated benefits for the month of application and benefits for the first full month of participation. The benefits shall be issued in accordance with §274.2(c) of this chapter.

(3) *Denying the application*. Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for a scheduled interviewand has made no subsequent contact with the State agency to express interest in pursuing the application, the State agency shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. In cases where the State agency was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the State agency may also deny the application on the 30th day if the State agency provided assistance to the household in obtaining verification as specified in paragraph (f)(5) of this section, but the household failed to provide the requested verification.

(h) *Delays in processing*. If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall take the following action:

(1) *Determining cause*. The State agency shall first determine the cause of the delay using the following criteria:

(i) A delay shall be considered the fault of the household if the household has failed to complete the application process even though the State agency has taken all the action it is required to take to assist the household. The State agency must have taken the following actions before a delay can be considered the fault of the household:

(A) For households that have failed to complete the application form, the State agency must have offered, or attempted to offer, assistance in its completion.

(B) If one or more members of the household have failed to register for work, as required in §273.7, the State agency must have informed the household of the need to register for work, determined if the household members are exempt from work registration, and given the household at least 10 days from the date of notification to register these members.

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

(D) For households that have failed to appear for an interview, the State agency must notify the household that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day processing period, the State agency must schedule a second interview. If the household fails to schedule a second interview, or the subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and

register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

(ii) Delays that are the fault of the State agency include, but are not limited to, those cases where the State agency failed to take the actions described in paragraphs (h)(1)(i) (A) through (D) of this section.

(2) *Delays caused by the household.* (i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(A) The State agency has the option of sending the household either a notice of denial or a notice of pending status on the 30th day. The option chosen may vary from one project area to another, provided the same procedures apply to all households within a project area. However, if a notice of denial is sent and the household takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household failed to take the required action within 60 days following the date the application was filed, or if the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing, and the household fails to provide the necessary verification by this 30th day.

(B) State agencies may include in the notice a request that the household report all changes in circumstances since it filed its application. The information that must be contained on the notice of denial or pending status is explained in § 273.10(g)(1) (ii) and (iii).

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(3) *Delays caused by the State agency.* (i) Whenever a delay in the initial 30-day period is the fault of the State agency, the State agency shall take immediate corrective action. Except as specified in §§ 273.2(f)(1)(ii)(F) and 273.2(f)(10)(i), the State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process. If verification is lacking the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(ii) If the household is found to be eligible during the second 30-day period, the household shall be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, the State agency shall deny the application.

(4) *Delays beyond 60 days.* (i) If the State agency is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and the State agency was at fault for the delay in the initial 30 days, the household shall receive benefits retroactive

to the month of application. However, if the initial delay was the household's fault, the household shall receive benefits retroactive only to the month following the month of application. The State agency may use the original application to determine the household's eligibility in the months following the 60-day period, or it may require the household to file a new application.

(ii) If the State agency is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, the State agency may continue to process the original application, or deny the case and notify the household to file a new application. If the case is denied, the household shall also be advised of its possible entitlement to benefits lost as a result of State agency caused delays in accordance with §273.17. If the State agency was also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

(iii) If the household is at fault for not completing the application process by the end of the second 30-day period, the State agency shall deny the application and require the household to file a new application if it wishes to participate. If however, the State agency has chosen the option of holding the application pending only until 30 days following the date of the initial request for the particular verification that was missing, and verification is not received by that 30th day, the State agency may immediately close the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household shall not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of the State agency.

(i) *Expedited service*—(1) *Entitlement to expedited service.* The following households are entitled to expedited service:

(i) Households with less than $150 in monthly gross income, as computed in §273.10 provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in §273.9(c)(8)) do not exceed $100;

(ii) Migrant or seasonal farmworker households who are destitute as defined in §273.10(e)(3) provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in §273.9(c)(8)) do not exceed $100;

(iii) Households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage, and utilities (including entitlement to a SUA, as appropriate, in accordance with §273.9(d)).

(2) *Identifying households needing expedited service.* The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.

(3) *Processing standards.* All households receiving expedited service, except those receiving it during months in which allotments are suspended or cancelled, shall have their cases processed in accordance with the following provisions. Those households receiving expedited service during suspensions or cancellations shall have their cases processed in accordance with the provisions of §271.7(e)(2).

(i) *General.* For households entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the seventh calendar day following the date an application was filed. For a resident of a public institution who applies for benefits prior to his/her release from the institution in accordance with §273.1(e)(2) and who is entitled to expedited service, the date of filing of his/her food stamp application is the date of release of the applicant from the institution. Whatever system a State agency uses to ensure meeting this delivery standard shall be designed to allow a reasonable opportunity for

redemption of ATPs no later than the seventh calendar day following the day the application was filed.

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the 7 calendar days following the date an application was filed.

(iii) *Out-of-office interviews.* If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing. If the State agency conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be calculated in the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.

(iv) *Late determinations.* If the prescreening required in paragraph (i)(2) of this section fails to identify a household as being entitled to expedited service and the State agency subsequently discovers that the household is entitled to expedited service, the State agency shall provide expedited service to households within the processing standards described in paragraphs (i)(3) (i) and (ii) of this section, except that the processing standard shall be calculated from the date the State agency discovers the household is entitled to expedited service.

(v) *Residents of shelters for battered women and children.* Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled in accordance with the time limits in paragraph (i)(3)(i) of this section.

(4) *Special procedures for expediting service.* The State agency shall use the following procedures when expediting certification and issuance:

(i) In order to expedite the certification process, the State agency shall use the following procedures:

(A) In all cases, the applicant's identity (i.e., the identity of the person making the application) shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section.

(B) All reasonable efforts shall be made to verify within the expedited processing standards, the household's residency in accordance with § 273.2(f)(1)(vi), income statement (including a statement that the household has no income), liquid resources and all other factors required by § 273.2(f), through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because these eligibility factors have not been verified.

State agencies also may verify factors other than identity, residency, and income provided that verification can be accomplished within expedited processing standards. State agencies should attempt to obtain as much additional verification as possible during the interview, but should not delay the certification of households entitled to expedited service for the full timeframes specified in paragraph (i)(3) of this section when the State agency has determined it is unlikely that other verification can be obtained within these timeframes. Households entitled to expedited service will be asked to furnish a social security number for each person applying for benefts or apply for one for each person applying for benefits before the second full month of participation. Those household members unable to provide the required SSN's or who do not have one prior to the second full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in § 273.6(d), except that households with a newborn may have up to 6 months following the month the baby was born to supply an SSN or proof of an application for an

SSN for the newborn in accordance with §273.6(b)(4). The State agency may attempt to register other household members but shall postpone the registration of other household members if it cannot be accomplished within the expedited service timeframes. With regard to the work registration requirements specified in §273.7, the State agency shall, at a minimum, require the applicant to register (unless exempt or unless the household has designated an authorized representative to apply on its behalf in accordance with §273.1(f)). The State agency may attempt registration of other household members by requesting that the applicant complete the work registration forms for other household members to the best of his or her ability. The State agency may also attempt to accomplish work registration for other household members in a timely manner through other means, such as calling the household. The State agency may attempt to verify questionable work registration exemptions, but such verification shall be postponed if the expedited service timeframes cannot be met.

(ii) Once an acceptable collateral contact has been designated, the State agency shall promptly contact the collateral contact, in accordance with the provisions of paragraph (f)(4)(ii) of this section. Although the household has the primary responsibility for providing other types of verification, the State agency shall assist the household in promptly obtaining the necessary verification.

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned normal certification periods. If verification was postponed, the State agency may certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the State agency's option, may assign normal certification periods to those households whose circumstances would otherwise warrant longer certification periods. State agencies, at their option, may request any household eligible for expedited service which applies after the 15th of the month and is certified for the month of application and the subsequent month only to submit a second application (at the time of the initial certification) if the household's verification is postponed.

(A) For households applying on or before the 15th of the month, the State agency may assign a one-month certification period or assign a normal certification period. Satisfaction of the verification requirements may be postponed until the second month of participation. If a one-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household has to satisfy all verification requirements that were postponed. For subsequent months, the household must reapply and satisfy all verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not appear for the interview, the State agency does not need to contact the household again.

(B) For households applying after the 15th of the month, the State agency may assign a 2-month certification period or a normal certification period of no more than 12 months. Verification may be postponed until the third month of participation, if necessary, to meet the expedited timeframe. If a two-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household is obligated to satisfy the verification requirements that were postponed. For subsequent months, the household must reapply and satisfy the verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not attend the interview, the State agency does not need to contact the household again. When a certification period of longer than 2 months is assigned and verification is postponed, households must be sent a

notice of eligibility advising that no benefits for the third month will be issued until the postponed verification requirements are satisfied. The notice must also advise the household that if the verification process results in changes in the household's eligibility or level of benefits, the State agency will act on those changes without advance notice of adverse action.

(C) Households which apply for initial benefits (as described in § 273.10(a)) after the 15th of the month, are entitled to expedited service, have completed the application process, and have been determined eligible to receive benefits for the initial month and the next subsequent month, shall receive a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation within the expedited service timeframe. If necessary, verification shall be postponed to meet the expedited timeframe. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(D) The provisions of paragraph (i)(4)(iii)(C) of this section do not apply to households which have been determined ineligible to receive benefits for the month of application or the following month, or to households which have not satisfied the postponed verification requirements. However, households eligible for expedited service may receive benefits for the initial month and next subsequent month under the verification standards of paragraph (i)(4) of this section.

(E) If the State agency chooses to exercise the option to require a second application in accordance with paragraph (i)(4)(iii) of this section and receives the application before the third month, it shall not deny the application but hold it pending until the third month. The State agency will issue the third month's benefits within 5 working days from receipt of the necessary verification information but not before the first day of the month. If the postponed verification requirements are not completed before the end of the third month, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification, the household either completes the verification requirements that were postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification. The provisions of this section shall not apply at recertification if a household reapplies before the end of its current certification period.

(v) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) *PA, GA and categorically eligible households.* The State agency must notify households applying for public assistance (PA) of their right to apply for food stamp benefits at the same time and must allow them to apply for food stamp benefits at the same time they apply for PA benefits. The State agency must also notify such households that time limits or other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. The State agency may process the applications of such households in accordance with the requirements of paragraph (j)(1) of this section, and the State agency must base their eligibility solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application form, households in which all members are included in a

State or local GA grant may have their application for food stamps included in the GA application form. State agencies may use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The State agency must base eligibility of jointly processed GA households solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. The State agency must base the benefit levels of all households solely on food stamp criteria. The State agency must certify jointly processed and categorically eligible households in accordance with food stamp procedural, timeliness, and notice requirements, including the 7-day expedited service provisions of paragraph (i) of this section and normal 30-day application processing standards of paragraph (g) of this section. Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, individuals are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Individuals entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. The State agency may not consider as recipients those individuals not receiving GA, PA, or SSI benefits who are entitled to Medicaid only.

(1) *Applicant PA households.* (i) If a joint PA/food stamp application is used, the application may contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility must be contained in the PA form or must be an attachment to it. The joint PA/food stamp application must clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section.

(ii) The State agency may conduct a single interview at initial application for both public assistance and food stamp purposes. A household's eligibility for food stamp out-of-office interview provisions in paragraph (e)(2) of this section does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both PA and food stamps, the State agency must follow the verification procedures described in paragraphs (f)(1) through (f)(8) of this section for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, if the household has provided the State agency sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section, but has failed to provide sufficient verification to meet the PA verification rules, the State agency may not use such failure as a basis for denying the household's food stamp application or failing to comply with processing requirements of paragraph (g) of this section. Under these circumstances, the State agency must process the household's food stamp application and determine eligibility based on its compliance with the requirements of paragraphs (f)(1) through (f)(8) of this section.

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in §273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the

initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible in accordance with § 273.12(c). The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or it authorized representative to initial *all* changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved.

(v) The State agency may not require households which file a joint PA/food stamp application and whose PA applications are denied to file new food stamp applications. Rather, the State agency must determine or continue their food stamp eligibility on the

basis of the original applications filed jointly for PA and food stamp purposes. In addition, the State agency must use any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(2) *Categorically eligible PA and SSI households.* (i) The following households are categorically eligible for food stamps unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps.

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive cash through a PA program funded in full or in part with Federal money under Title IV-A or with State money counted for maintenance of effort (MOE) purposes under Title IV-A;

(B) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to forward purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104–193.

(C) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L. 104–193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(D) Any household in which all members receive or are authorized to receive SSI benefits, except that residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), are not categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The State agency must consider the individuals categorically eligible at such time as SSA makes a final SSI eligibility and the institution has released the individual.

(E) Any household in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with paragraphs (j)(2)(i)(A) through (j)(2)(i)(D) of this section.

(ii) The State agency, at its option, may extend categorical eligibility to the following households only if doing so will further the purposes of the Food Stamp Act:

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104–193. States must inform FNS of the TANF services under this paragraph that they are determining to confer categorical eligibility.

(B) Subject to FNS approval, any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV-A or Federal money under Title IV-A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L 104–193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(iii) Any household in which one member receives or is authorized to receive benefits according to paragraphs (j)(2)(i)(B), (j)(2)(i)(C), (j)(2)(ii)(A) and (j)(2)(ii)(B), of this section and the State agency determines that the whole household benefits.

(iv) For purposes of paragraphs (j)(2)(i), (j)(2)(ii),and (j)(2)(iii) of this section, ''authorized to receive'' means

that an individual has been determined eligible for benefits and has been notified of this determination, even if the benefits have been authorized but not received, authorized but not accessed, suspended or recouped, or not paid because they are less than a minimum amount.

(v) The eligibility factors which are deemed for food stamp eligibility without the verification required in paragraph (f) of this section because of PA/SSI status are the resource, gross and net income limits; social security number information, sponsored alien information, and residency. However, the State agency must collect and verify factors relating to benefit determination that are not collected and verified by the other program if these factors are required to be verified under paragraph (f) of this section. If any of the following factors are questionable, the State agency must verify, in accordance with paragraph (f) of this section, that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph (j) of this section;

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(vi) of this section.

(vi) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Temporary Assistance for Needy Families (TANF) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

(vii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.16 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with § 273.22; or

(C) The head of the household is disqualified for failure to comply with the work requirements in accordance with § 273.7.

(D) Any member of that household is ineligible under § 273.11(m) by virtue of a conviction for a drug-related felony.

(viii) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

(ix) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.1(e).

(E) Ineligible because of failure to comply with a work requirement of § 273.7.

(x) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(xi) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273.10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(3) *Applicant GA households.* (i) State agencies may use the joint application processing procedures in paragraph (j)(1) of this section for GA households, except for the effective date of categorical eligibility, when the criteria in paragraphs (j)(3)(i) (A) and (B) of this section are met. Benefits for GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, shall be provided from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1991) or local GA categorical eligibility (August 1, 1992), whichever is later:

(A) The State agency administers a GA program which uses formalized application procedures and eligibility criteria that test levels of income and resources; and,

(B) Administration of the GA program is integrated with the administration of the PA or food stamp programs, in that the same eligibility workers process applications for GA benefits and PA or food stamp benefits.

(ii) State agencies in which different eligibility workers process applications for GA benefits and PA or food stamp benefits, but procedures otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1992) or local GA categorical eligibility (August 1, 1992), whichever is later.

(4) *Categorically eligible GA households.* Households in which each member receives benefits from a State or local GA program which meets the criteria for conferring categorical eligibility in paragraph (j)(4)(i) of this section shall be categorically eligible for food stamps unless the individual or household is ineligible as specified in paragraph (j)(4)(iv) and (j)(4)(v) of this section.

(i) *Certification of qualifying programs.* Recipients of benefits from programs that meet the criteria in paragraphs (j)(4)(i)(A) through (j)(4(i)(C) of this section shall be considered categorically eligible to receive benefits from the Food Stamp Program. If a program does not meet all of these criteria, the State agency may submit a program description to the appropriate FNS regional office for a determination. The description should contain, at a minimum, the type of assistance provided, the income eligibility standard, and the period for which the assistance is provided.

(A) The program must have income standards which do not exceed the gross income eligibility standard in §273.9(a)(1). The rules of the GA program apply in determining countable income.

(B) The program must provide GA benefits as defined in §271.2 of this part.

(C) The program must provide benefits which are not limited to one-time emergency assistance.

(ii) *Verification requirements.* In determining whether a household is categorically eligible, the State agency shall verify that each member receives PA benefits, SSI, or GA from a program that meets the criteria in paragraph (j)(4)(i) section or that has been certified by FNS as an appropriate program and that it includes no individuals who have been disqualified as provided in paragraph (j)(4)(iv) or (j)(2)(v) of this section. The State agency shall also verify household composition if it is questionable, in accordance with §273.2(f), in order to determine that the household meets the definition of a household in §273.1(a).

(iii) *Deemed eligibility factors.* When determining eligibility for a categorically eligible household, all Food Stamp Program requirements apply except the following:

(A) *Resources.* None of the provisions of §273.8 apply to categorically eligible households except the second sentence of §273.8(a) pertaining to categorical eligibility and §273.8(i) concerning

transfer of resources. The provision in § 273.10(b) regarding resources available the time of the interview does not apply to categorically eligible households.

(B) *Gross and net income limits.* None of the provisions in § 273.9(a) relating to income eligibility standards apply to categorically eligible households, except the fourth sentence pertaining to categorical eligibility. The provisions in §§ 273.10(a)(1)(i) and 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) *Zero benefit households.* All eligible households of one or two persons must be provided the minimum benefit, as required by § 273.10(e)(2)(ii)(C).

(D) Residency.

(E) Sponsored alien information.

(iv) *Ineligible household members.* No person shall be included as a member of an otherwise categorically eligible household if that person is:

(A) An ineligible alien, as defined in § 273.4;

(B) An ineligible student, as defined in § 273.5;

(C) Disqualified for failure to provide or apply for an SSN, as required by § 273.6;

(D) A household member, not the head of household, disqualified for failure to comply with a work requirement of § 273.7;

(E) Disqualified for intentional program violation, as required by § 273.16;

(F) An SSI recipient in a cash-out State, as defined in § 273.20; or

(G) An individual who is institutionalized in a nonexempt facility, as defined in § 273.1(e).

(v) *Ineligible households.* A household shall not be considered categorically eligible if:

(A) It refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in §§ 273.2(d) and 273.21(m)(1)(ii);

(B) The household is disqualified because the head of household fails to comply with a work requirement of § 273.7;

(C) The household is ineligible under the striker provisions of § 273.1(g); or

(D) The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Program, as provided in § 273.8(i).

(vi) *Combination households.* Households consisting entirely of recipients of PA, SSI and/or GA from a program that meets the requirements of § 273.2(j)(4)(i) shall be categorically eligible in accordance with the provisions for paragraphs (j)(2)(iii) and (j)(2)(v) of this section for members receiving PA and SSI or provisions of paragraphs (j)(4) (iv) and (v) of this section for members receiving GA.

(5) *Households with some PA or GA recipients.* State agencies that use the joint application processing procedures in paragraphs (j)(1) and (j)(3) of this section may apply these procedures to a food stamp applicant household in which some, but not all, members are in the PA/GA filing unit, except for procedures concerning categorical eligibility. If the State agency decides not to use the joint application procedures for these households, the households shall file separate applications for PA/GA and food stamp benefits. This decision shall not be made on a case-by-case basis, but shall be applied uniformly to all households of this type in a project area.

(k) *SSI households.* For purposes of this paragraph, SSI is defined as Federal SSI payments made under title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616 of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Pub. L. 93–66. Except in cashout States (§ 273.20), households which have not applied for food stamps in the thirty preceding days, and which do not have applications pending, may apply and be certified for food stamp benefits in accordance with the procedures described in § 273.2(k)(1)(i) or § 273.2(k)(1)(ii) and with the notice, procedural and timeliness requirements of the Food Stamp Act of 1977 and its implementing regulations. Households applying simultaneously for SSI and food stamps shall be subject to food stamp eligibility criteria, and benefit levels shall be based solely on food stamp eligibility criteria

until the household is considered categorically eligible. However, households in which all members are either PA or SSI recipients or authorized to receive PA or SSI benefits (as discussed in §273.2(j)) shall be food stamp eligible based on their PA/SSI status as provided for in §273.2(j)(1)(iv) and (j)(2). Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. The State agency shall make an eligibility determination based on information provided by SSA or by the household.

(1) *Initial application and eligibility determination*. At each SSA office, the State agency shall either arrange for SSA to complete and forward food stamp applications, or the State agency shall outstation State food stamp eligibility workers at the SSA Offices with SSA's concurrence, based upon an agreement negotiated between the State agency and the SSA.

(i) If the State agency arranges with the SSA to complete and forward food stamp applications the following actions shall be taken:

(A) Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the SSA shall inform the household of:

(*1*) Its right to apply for food stamps at the SSA office without going to the food stamp office; and

(*2*) Its right to apply at a food stamp office if it chooses to do so.

(B) The SSA will accept and complete food stamp applications received at the SSA Office from SSI households and forward them, within one working day after receipt of a signed application, to a designated office of the State agency. SSA shall also forward to the State agency a transmittal form which will be approved by SSA and FNS. The SSA will use the national food stamp application form for joint processing. State agencies may substitute a State food stamp application, provided that prior approval is received from both FNS and SSA. SSA shall approve, deny, or comment upon FNS-approved State food stamp applications within thirty days of their submission to SSA.

(C) SSA will accept and complete food stamp applications from SSI households received by SSA staff in contact stations. SSA will forward all food stamp applications from SSI households to the designated food stamp office.

(D) The SSA staff shall complete joint SSI and food stamp applications for residents of public institutions in accordance with §273.1(e)(2).

(E) The State agency shall designate an address for the SSA to forward food stamp applications and accompanying information to the State agency for eligibility determination. Applications and accompanying information must be forwarded to the agreed upon address in accordance with the time standards contained in §273.2(k)(1)(i)(B).

(F) Except for applications taken in accordance with paragraph (k)(1)(i)(D) of this section, the State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA. The expedited processing time standards shall begin on the date the State agency receives a food stamp application. The State agency shall make an eligibility determination and issue food stamp benefits to a resident of a public institution who applies jointly for SSI and food stamps within 30 days following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for food stamps and SSI prior to release shall also begin on the date of the applicant's release from the institution in accordance with §273.2 (i)(3)(i). SSA shall notify the State agency of the date of release of the applicant from the institution. If, for any reason, the State agency is not notified on a timely basis of the applicant's release date, the State agency shall restore benefits in accordance with §273.17 to such applicant back to the date of release. Food stamp applications and supporting documentation sent to an incorrect food stamp office shall be sent to the correct office, by

the State agency, within one working day of their receipt in accordance with § 273.2(c)(2)(ii).

(G) Households in which all members are applying for or participating in SSI will not be required to see a State eligibility worker, or otherwise be subjected to an additional State interview. The food stamp application will be processed by the State agency. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits unless: the application is improperly completed; mandatory verification required by § 273.2(f)(1) is missing; or, the State agency determines that certain information on the application is questionable. In no event would the applicant be required to appear at the food stamp office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall not constitute a second food stamp certification interview.

(H) SSA shall refer non-SSI households to the correct food stamp office. The State agencies shall process those applications in accordance with the procedures noted in § 273.2. Applications from such households shall be considered filed on the date the signed application is taken at the correct State agency office, and the normal and expedited processing time standards shall begin on that date.

(I) The SSA shall prescreen all applications for entitlement to expedited services on the day the application is received at the SSA office and shall mark ''Expedited Processing'' on the first page of all households' applications that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benefits may be issued a few days sooner if the household applies directly at the food stamp office. The household may take the application from SSA to the food stamp office for screening, an interview, and processing of the application. This provision does not apply to applications described in paragraph (k)(1)(i)(D) of this section.

(J) The State agency shall prescreen all applications received from the SSA for entitlement to expedited service on the day the application is received at the correct food stamp office. All SSI households entitled to expedited service shall be certified in accordance with § 273.2(i) except that the expedited processing time standard shall begin on the date the application is received at the correct State agency office, unless the applicant is a resident of a public institution as described in § 273.1(e)(2).

(K) The State agency shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA are already participating in the Food Stamp Program directly through the State agency.

(L) If SSA takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a food stamp application shall also be completed during the telephone interview. In these cases, the food stamp application shall be mailed to the claimant for signature for return to the SSA office or to the State agency. SSA shall then forward any food stamp applications it receives to the State agency. The State agency may not require the household to be interviewed again in the food stamp office. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits except in accordance with § 273.2(k)(1)(i)(F).

(M) To SSI recipients redetermined for SSI by mail, the SSA shall send a stuffer informing them of their right to file a food stamp application at the SSA office (if they are members of a pure SSI household) or at their local food stamp office, and their right to an out-of-office food stamp interview to be performed by the State agency if the household is unable to appoint an authorized representative.

(N) Section 272.4 bilingual requirements shall not apply to the Social Security Administration.

(O) State agencies shall provide and SSA shall distribute an information sheet or brochure to all households processed under this paragraph. This material shall inform the household of the following: The address and telephone number of the household's correct food stamp office, the remaining actions to be taken in the application

process, and a statement that a household should be notified of the food stamp determinations within thirty days and can contact the food stamp office if it receives no notification within thirty days, or has other questions or problems. It shall also include the client's rights and responsibilities (including fair hearings, authorized representatives, out-of-office interviews, reporting changes and timely reapplication), information on how and where to obtain coupons, and how to use coupons (including the commodities clients may purchase with coupons).

(P) As part of the SSA-State agency joint food stamp processing agreement, States may negotiate, on behalf of project areas, to have SSA provide initial eligibility and payment data where the local area is unable to access accurate and timely data through the State's SDX. However, in negotiating such agreements, SSA may challenge a State's determination that it does not have the computer capability to use SDX data. If SSA, FNS, and the State are unable to resolve this matter, and SSA determines that a State does have the capability to provide accurate and timely SDX data to the food stamp project area, SSA is not required to provide alternate means of transmitting initial SSI eligibility and payment data.

(ii) If the State agency chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed.

(A) SSA will provide adequate space for State food stamp eligibility workers in SSA offices.

(B) The State agency shall have at least one outstationed worker on duty at all time periods during which households will be referred for food stamp application processing. In most cases this would require the availability of an outstationed worker throughout normal SSA business hours.

(C) The following households shall be entitled to file food stamp applications with, and be interviewed by an outstationed eligibility worker:

(*1*) Households containing an applicant for or recipient of SSI;

(*2*) Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under title II of the Social Security Act, if the State agency and SSA have an agreement to allow the processing of such households at SSA offices.

(D) Households shall be interviewed for food stamps on the day of application unless there is insufficient time to conduct an interview. The State agency shall arrange for the outstationed worker to interview applicants as soon as possible.

(E) The State agency shall not refuse to provide service to persons served by the SSA office because they do not reside in the county or project area in which the SSA office is located, provided, however, that they reside within the jurisdictions served by the SSA office and the State agency. The State agency is not required to process the applications of persons who are not residing within the SSA office jurisdiction but who do reside within the State agency's jurisdiction, other than to forward the forms to the correct food stamp offices.

(F) The State agency may permit the eligibility worker outstationed at the SSA to determine the eligibility of households, or may require that completed applications be forwarded elsewhere for the eligibility determination.

(G) Applications from households entitled to joint processing through an outstationed eligibility worker shall be considered filed on the date they are submitted to that worker. Both the normal and expedited service time standards shall begin on that date.

(H) Households not entitled to joint processing shall be entitled to obtain and submit applications at the SSA office. The outstationed eligibility worker need not process these applications except to forward them to the correct food stamp office where they shall be considered filed upon receipt (any activities beyond acceptance and referral of the application would require SSA concurrence). Both the normal and expedited service time standards shall begin on that date.

(iii) Regardless of whether the State agency or SSA conducts the food stamp interview, the following actions shall be taken:

(A) *Verification.* (*1*) The State agency shall ensure that information required by § 273.2(f) is verified prior to certification for households initially applying. Households entitled to expedited certification services shall be processed in accordance with § 273.2(i).

(*2*) The State agency has the option of verifying SSI benefit payments through the State Data Exchange (SDX), the Beneficiary Data Exchange (BENDEX) and/or through verification provided by the household.

(*3*) State agencies may verify other information through SDX and BENDEX but only to the extent permitted by data exchange agreements with SSA. Information verified through SDX or BENDEX shall not be reverified unless it is questionable. Households shall be given the opportunity to provide verification from another source if all necessary information is not available on the SDX or the BENDEX, or if the SDX/BENDEX information is contradictory to other household information.

(B) *Certification period.* (*1*) State agencies shall certify households under these procedures for up to twelve months, according to the standards in § 273.10(f), except for State agencies which must assign the initial certification period to coincide with adjustments to the SSI benefit amount as designated in § 273.10(f)(3)(iii).

(*2*) In cases jointly processed in which the SSI determination results in denial, and the State agency believes that food stamp eligibility or benefit levels may be affected, the State agency shall send the household a notice of expiration advising that the certification period will expire the end of the month following the month in which the notice is sent and that it must reapply if it wishes to continue to participate. The notice shall also explain that its certification period is expiring because of changes in circumstances which may affect food stamp eligibility or benefit levels and that the household may be entitled to an out-of-office interview, in accordance with § 273.2(e)(2).

(C) *Changes in circumstances.* (*1*) Households shall report changes in accordance with the requirements in § 273.12. The State agency shall process changes in accordance with § 273.12.

(*2*) Within ten days of learning of the determination of the application for SSI through SDX, the household, advisement from SSA where SSA agrees to do so for households processed under § 273.2(k)(1)(i), or from any other source, the State agency shall take required action in accordance with § 273.12. State agencies are encouraged to monitor the results of the SSI determination through SDX and BENDEX to the extent practical.

(*3*) The State agency shall process adjustments to SSI cases resulting from mass changes, in accordance with provisions of § 273.12(e).

(D) *SSI households applying at the food stamp office.* The State agency shall allow SSI households to submit food stamp applications to local food stamp offices rather than through the SSA if the household chooses. In such cases all verification, including that pertaining to SSI program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the State agency rather than being provided by the SSA.

(E) *Restoration of lost benefits.* The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency or by the Social Security Administration through joint processing. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with SSA or with a State agency's outstationed worker. Lost benefits shall be restored in accordance with § 273.17.

(2) *Recertification.* (i) The State agency shall complete the application process and approve or deny timely applications for recertification in accordance with § 273.14 of the food stamp regulations. A face-to-face interview shall be waived if requested by a household consisting entirely of SSI participants unable to appoint an authorized representative. The State agency shall provide SSI households with a notice of expiration in accordance with § 273.14(b), except that such notification shall inform households consisting entirely of SSI recipients that they are entitled to a waiver of a face-to-face

interview if the household is unable to appoint an authorized representative.

(ii) Households shall be entitled to make a timely application (in accordance with § 273.14(b)(3)) for food stamp recertification at an SSA office under the following conditions.

(A) In SSA offices where § 273.2(k)(1)(i) is in effect, SSA shall accept the application of a pure SSI household and forward the completed application, transmittal form and any available verification to the designated food stamp office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the State agency may conduct an out-of-office interview, if necessary.

(B) In SSA offices where § 273.2(k)(1)(ii) is in effect, the outstationed worker shall accept the application and interview the recipient and the State agency shall process the application according to § 273.14.

(l) *Households applying for or receiving social security benefits.* An applicant for or recipient of social security benefits under title II of the Social Security Act shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a Food Stamp Program application at the SSA office. The SSA office is not required to accept applications and conduct interviews for title II applicants/recipients in the manner prescribed in § 273.2(k) for SSI applicants/recipients unless the State agency has chosen to outstation eligibility workers at the SSA office and has an agreement with SSA to allow the processing of such households at SSA offices. In these cases, processing shall be in accordance with § 273.2(k)(1)(ii).

(m) *Households where not all members are applying for or receiving SSI.* An applicant for or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a food stamp application at the SSA office. The SSA office is not required to accept applications or to conduct interviews for SSI applicants or recipients who are not members of households in which all are SSI applicants or recipients unless the State agency has chosen to outstation eligibility workers at the SSA office. In this case, processing shall be in accordance with § 273.2(k)(1)(ii).

(n) *Authorized representatives.* Representatives may be authorized to act on behalf of a household in the application process, in obtaining food stamp benefits, and in using food stamp benefits.

(1) *Application processing and reporting.* The State agency shall inform applicants and prospective applicants that indicate that they may have difficulty completing the application process, that a nonhousehold member may be designated as the authorized representative for application processing purposes. The household member or the authorized representative may complete work registration forms for those household members required to register for work. The authorized representative designated for application processing purposes may also carry out household responsibilities during the certification period, such as reporting changes in the household's income or other household circumstances in accordance with §§ 273.12(a) and 273.21. Except for those situations in which a drug and alcohol treatment center or other group living arrangement acts as the authorized representative, the State agency must inform the household that the household will be held liable for any overissuance that results from erroneous information given by the authorized representative.

(i) A nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances and the authorized representative designation has been made in writing by the head of the household, the spouse, or another responsible member of the household. Paragraph (n)(4) of this section contains further restrictions on who can be designated an authorized representative.

(ii) Residents of drug or alcohol treatment centers must apply and be certified through the use of authorized representatives in accordance with

§ 273.11(e). Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives in accordance with § 273.11(f).

(2) *Obtaining food stamp benefits.* An authorized representative may be designated to obtain benefits. Even if the household is able to obtain benefits, it should be encouraged to name an authorized representative for obtaining benefits in case of illness or other circumstances which might result in an inability to obtain benefits. The name of the authorized representative must be recorded in the household's case record and on the food stamp identification (ID) card, as provided in § 274.10(a)(1) of this chapter. The authorized representative for obtaining benefits may or may not be the same individual designated as an authorized representative for the application process or for meeting reporting requirements during the certification period. The State agency must develop a system by which a household may designate an emergency authorized representative in accordance with § 274.10(c) of this chapter to obtain the household's benefits for a particular month.

(3) *Using benefits.* A household may allow any household member or nonmember to use its ID card and benefits to purchase food or meals, if authorized, for the household. Drug or alcohol treatment centers and group living arrangements which act as authorized representatives for residents of the facilities must use food stamp benefits for food prepared and served to those residents participating in the Food Stamp Program (except when residents leave the facility as provided in § 273.11(e) and (f)).

(4) *Restrictions on designations of authorized representatives.* (i) The State agency must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

(A) State agency employees who are involved in the certification or issuance processes and retailers who are authorized to accept food stamp benefits may not act as authorized representatives without the specific written approval of a designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(B) An individual disqualified for an intentional Program violation cannot act as an authorized representative during the disqualification period, unless the State agency has determined that no one else is available to serve as an authorized representative. The State agency must separately determine whether the individual is needed to apply on behalf of the household, or to obtain benefits on behalf of the household.

(C) If a State agency has determined that an authorized representative has knowingly provided false information about household circumstances or has made improper use of coupons, it may disqualify that person from being an authorized representative for up to one year. The State agency must send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the reason for the proposed action and the household's right to request a fair hearing. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes which act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households circumstances, may be prosecuted under applicable Federal and State statutes for their acts.

(D) Homeless meal providers, as defined in § 271.2 of this chapter, may not act as authorized representatives for homeless food stamp recipients.

(ii) In order to prevent abuse of the program, the State agency may set a limit on the number of households an authorized representative may represent.

(iii) In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, the State agency

should exercise caution to assure that each household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, the household is receiving the correct amount of benefits and that the authorized representative is properly using the benefits.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

Subpart B—Residency and Citizenship

§ 273.3 Residency.

(a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

(b) When a household moves within the State, the State agency may require the household to reapply in the new project area or it may transfer the household's casefile to the new project area and continue the household's certification without reapplication. If the State agency chooses to transfer the case, it shall act on changes in household circumstances resulting from the move in accordance with § 273.12(c) or § 273.21. It shall also ensure that duplicate participation does not occur in accordance with § 272.4(f) of this chapter, and that the transfer of a household's case shall not adversely affect the household.

[46 FR 60166, Dec. 8, 1981, as amended by Amdt. 211, 47 FR 53317, Nov. 26, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§ 273.4 Citizenship and alien status.

(a) *Household members meeting citizenship or alien status requirements.* No person is eligible to participate in the Program unless that person is:

(1) A U.S. citizen[1];

(2) A U.S. non-citizen national[1]

(3) An individual who is:

(i) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(ii) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) An individual who is:

(i) Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(ii) The spouse, or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(iii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a full-time student under the age of 22; an unmarried child under the age of 18 or if a full time student under the age of 22 of such a deceased Hmong or Highland

[1] For guidance, see the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

Laotian provided the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday. For purposes of this paragraph (a)(4)(iii), child means the legally adopted or biological child of the person described in paragraph (a)(4)(i) of this section, or

(5) An individual who is:

(i) An alien who has been subjected to a severe form of trafficking in persons and who is certified by the Department of Health and Human Services, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(ii) An alien who has been subjected to a severe form of trafficking in persons and who is under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(iii) The spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(iv) The spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(6) An individual who is both a qualified alien as defined in paragraph (a)(6)(i) of this section and an eligible alien as defined in paragraph (a)(6)(ii) or (a)(6)(iii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(F) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered;[2] or

(H) An alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(6)(i) of this section, is eligible to receive food stamps and is not subject to the requirement to be in qualified status for 5 years as set forth in paragraph (a)(6)(iii) of this section, if such individual meets at least one of the criteria of this paragraph (a)(6)(ii):

(A) An alien age 18 or older lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(*1*) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must

[2] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published at 62 FR 61344 on November 17, 1997.

determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(*2*) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total;

(B) An alien admitted as a refugee under section 207 of the INA;

(C) An alien granted asylum under section 208 of the INA;

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) or the INA;

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(F) An Amerasian admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461;

(G) An alien with one of the following military connections:

(*1*) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(*2*) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(*3*) The spouse and unmarried dependent children of a person described in paragraphs (a)(6)(ii)(G)(*1*) or (a)(6)(ii)(G)(*2*) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(6)(ii)(G)(*3*) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(6)(ii)(G)(*3*), child means the legally adopted or biological child of the person described in paragraph (a)(6)(ii)(G)(*1*) or (a)(6)(ii)(G)(*2*) of this section.

(H) An individual who is receiving benefits or assistance for blindness or disability (as specified in §271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who is under 18 years of age.

(iii) The following qualified aliens, as defined in paragraph (a)(6)(i) of this section, must be in a qualified status for 5 years before being eligible to receive food stamps. The 5 years in qualified status may be either consecutive or nonconsecutive. Temporary absences of less than 6 months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than 6 months, the

agency shall presume that U.S. residency was interrupted unless the alien presents evidence of his or her intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the United States for 5 years, the agency shall consider all months of residency in the United States, including any months of residency before the interruption:

(A) An alien age 18 or older lawfully admitted for permanent residence under the INA.

(B) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(C) An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered;

(D) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

(iv) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

(7) For purposes of determining eligible alien status in accordance with paragraphs (a)(4) and (a)(6)(ii)(I) of this section ''lawfully residing in the U.S.'' means that the alien is lawfully present as defined at 8 CFR 103.12(a).

(b) *Reporting illegal aliens.* (1) The State agency must inform the local INS office immediately whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the U.S. in violation of the INA. The State agency may meet this requirement by conforming with the Interagency Notice providing guidance for compliance with PRWORA section 404 published on September 28, 2000 (65 FR 58301).

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, the State agency must classify that member as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, the State agency must classify that person as an ineligible alien. In such cases the State agency must not continue efforts to obtain that documentation.

(c) *Households containing sponsored alien members*—(1) *Definition.* A sponsored alien is an alien for whom a person (the sponsor) has executed an affidavit of support (INS Form I–864 or I–864A) on behalf of the alien pursuant to section 213A of the INA.

(2) *Deeming of sponsor's income and resources.* For purposes of this paragraph (c)(2), only in the event a sponsored alien is an eligible alien in accordance with paragraph (a) of this section will the State agency consider available to the household the income and resources of the sponsor and spouse. For purposes of determining the eligibility and benefit level of a household of which an eligible sponsored alien is a member, the State agency must deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I–864 or I–864A, as the unearned income and resources of the sponsored alien. The State agency must deem the sponsor's income and resources until the alien gains U. S. citizenship, has worked or can receive credit for 40 qualifying quarters of work as described in paragraph (a)(6)(ii)(A) of this section, or the sponsor dies.

(i) The monthly income of the sponsor and sponsor's spouse (if he or she has executed INS Form I–864 or I–864A) deemed as that of the eligible sponsored alien must be the total monthly earned and unearned income, as defined in § 273.9(b) with the exclusions provided in § 273.9(c) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member applies or is recertified for participation, reduced by:

(A) A 20 percent earned income amount for that portion of the income

determined as earned income of the sponsor and the sponsor's spouse; and

(B) An amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(ii) If the alien has already reported gross income information on his or her sponsor in compliance with the sponsored alien rules of another State agency administered assistance program, the State agency may use that income amount for Food Stamp Program deeming purposes. However, the State agency must limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien to amounts specified in paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this section.

(iii) The State agency must consider as income to the alien any money the sponsor or the sponsor's spouse pays to the eligible sponsored alien, but only to the extent that the money exceeds the amount deemed to the eligible sponsored alien in accordance with paragraph (c)(2)(i) of this section.

(iv) The State agency must deem as available to the eligible sponsored alien the total amount of the resources of the sponsor and sponsor's spouse as determined in accordance with § 273.8, reduced by $1,500.

(v) If a sponsored alien can demonstrate to the State agency's satisfaction that his or her sponsor is the sponsor of other aliens, the State agency must divide the income and resources deemed under the provisions of paragraphs (c)(2)(i) and (c)(2)(iii) of this section by the number of such sponsored aliens. The State agency must use the same procedure to determine the amount of deemed income and resources to exclude in the case of a sponsored alien or a citizen child of a sponsored alien who is exempt from deeming in accordance with paragraphs (c)(3)(vi) or (c)(3)(vii) of this section.

(3) *Exempt aliens.* The provisions of paragraph (c)(2) of this section do not apply to:

(i) An alien who is a member of his or her sponsor's food stamp household;

(ii) An alien who is sponsored by an organization or group as opposed to an individual;

(iii) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

(iv) An indigent alien that the State agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). Prior to determining whether an alien is indigent, the State agency must explain the purpose of the determination to the alien and/or household representative and provide the alien and/or household representative the opportunity to refuse the determination. If the household refuses the determination, the State agency will not complete the determination and will deem the sponsor's income and resources to the alien's household in accordance with paragraph (c)(2) of this section. The State agency must inform the sponsored alien of the consequences of refusing this determination. For purposes of this paragraph (c)(3)(iv), the phrase ''is unable to obtain food and shelter'' means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size. The State agency must determine the amount of income and other assistance provided in the month of application. If the alien is indigent, the only amount that the State agency must deem to such an alien will be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewable for additional 12-month periods. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved. State

agencies may develop an administrative process under which information about the sponsored alien is not shared with the Attorney General or the sponsor without the sponsored alien's consent. The State agency must inform the sponsored alien of the consequences of failure to provide such consent. If the sponsored alien fails to provide consent, he or she shall be ineligible pursuant to paragraph (c)(5) of this section, and the State agency shall determine the eligibility and benefit level of the remaining household members in accordance with § 273.11(c).

(v) A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after the State agency determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer.[3] After 12 months, the State agency must not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the alien does not live with the batterer.

(vi) A sponsored alien child under 18 years of age of a sponsored alien.

(vii) A citizen child under age 18 of a sponsored alien.

(4) *Eligible sponsored alien's responsibilities.* During the period the alien is subject to deeming, the eligible sponsored alien is responsible for obtaining the cooperation of the sponsor and for providing the State agency at the time of application and at the time of recertification with the information and documentation necessary to calculate deemed income and resources in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section. The eligible sponsored alien is responsible for providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support. The State agency must attribute the entire amount of income and resources to the applicant eligible sponsored alien until he or she provides the information specified under this paragraph (c)(4). The eligible sponsored alien is also responsible for reporting the required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period. The State agency must handle such changes in accordance with the timeliness standards described in § 273.12 or § 273.21, as appropriate.

(5) *Awaiting verification.* Until the alien provides information or verification necessary to carry out the provisions of paragraph (c)(2) of this section, the sponsored alien is ineligible. The State agency must determine the eligibility of any remaining household members. The State agency must consider available to the remaining household members the income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) in determining the eligibility and benefit level of the remaining household members in accordance with § 273.11(c). If the sponsored alien refuses to cooperate in providing information or verification, other adult members of the alien's household are responsible for providing the information or verification required in accordance with the provisions of § 273.2(d). If the State agency subsequently receives information or verification, it must act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The State agency must assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Demands for restitution.* The State agency must exclude any sponsor who is participating in the Program from any demand made under 8 CFR 213a.4(a) for the value of food stamp benefits issued to an eligible sponsored alien he or she sponsors.

[Amdt. 388, 65 FR 70200, Nov. 21, 2000, as amended at 75 FR 4947, Jan. 29, 2010]

[3] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

Subpart C—Education and Employment

§ 273.5 Students.

(a) *Applicability*. An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions*. To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;

(4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment

and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) A program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) An employment and training program under § 273.7;

(iii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) An employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in § 273.7(e)(1). Using the criteria in § 273.7(e)(1), State agencies shall make the determinations as to whether or not the programs qualify.

(c) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).

(d) The income and resources of an ineligible student shall be handled as outlined in § 273.11(d).

[46 FR 43025, Aug. 25, 1981, as amended by Amdt. 235, 47 FR 55908, Dec. 14, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 277, 51 FR 30048, Aug. 22, 1986; Amdt. 370, 60 FR 48869, Sept. 21, 1995; 67 FR 41603, June 19, 2002]

§ 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS–5. To complete Form SS–5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt of Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(4) If the household is unable to provide proof of application for an SSN for a newborn, the household must provide the SSN or proof of application at its next recertification or within 6 months following the month the baby is born, whichever is later. If the household is

unable to provide an SSN or proof of application for an SSN at its next recertification within 6 months following the baby's birth, the State agency shall determine if the good cause provisions of paragraph (d) of this section are applicable.

(c) *Failure to comply*. If the State agency determines that a household member has refused or failed without good cause to provide or apply for an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided and not to the entire household. The earned or unearned income and resources of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income and resources to the extent specified in § 273.11(c) of these regulations.

(d) *Determining good cause*. In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household member has applied for an SSN or made every effort to supply SSA with the necessary information to complete an application for an SSN shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member can show good cause why an application for a SSN has not been completed in a timely manner, that person shall be allowed to participate for one month in addition to the month of application. If the household member applying for an SSN has been unable to obtain the documents required by SSN, the State agency caseworker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification*. The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSNs*. The State agency is authorized to use SSNs in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in § 273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the IEVS as specified in § 272.8.

(g) *Entry of SSNs into automated data bases*. State agencies with automated food stamp data bases containing household information shall enter all SSNs obtained in accordance with § 273.6(a) into these files.

[Amdt. 264, 51 FR 7206, Feb. 28, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§ 273.7 Work provisions.

(a) *Work requirements*. (1) As a condition of eligibility for food stamps, each household member not exempt under paragraph (b)(1) of this section must comply with the following Food Stamp Program work requirements:

(i) Register for work or be registered by the State agency at the time of application and every 12 months after initial registration. The member required to register need not complete the registration form.

(ii) Participate in a Food Stamp Employment and Training (E&T) program if assigned by the State agency, to the extent required by the State agency;

(iii) Participate in a workfare program if assigned by the State agency;

(iv) Provide the State agency or its designee with sufficient information regarding employment status or availability for work;

(v) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (h) of this section;

(vi) Accept a bona fide offer of suitable employment, as defined in paragraph (h) of this section, at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the Federal or State minimum wage or 80 percent of the wage that would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act been applicable to the offer of employment.

(vii) Do not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week, in accordance with paragraph (j) of this section.

(2) The Food and Nutrition Service (FNS) has defined the meaning of ''good cause,'' and ''voluntary quit,'' and ''reduction of work effort'' as used in paragraph (a)(1)(vii) of this section. See paragraph (i) of this section for a discussion of good cause; see paragraph (j) of this section for a discussion of voluntary quit and reduction of work effort.

(3) Each State agency will determine the meaning of any other terms used in paragraph (a)(1) of this section; the procedures for establishing compliance with Food Stamp Program work requirements; and whether an individual is complying with Food Stamp Program work requirements. A State agency must not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than is a comparable meaning, procedure, or determination under the State agency's program funded under title IV-A of the Social Security Act.

(4) Strikers whose households are eligible under the criteria in § 273.1(e) are subject to Food Stamp Program work requirements unless they are exempt under paragraph (b)(1) of this section at the time of application.

(5) State agencies may request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the work requirements under title IV of the Social Security Act or for GA households. However, the failure of a household member to comply with State or local work requirements that exceed the requirements listed in this section must not be considered grounds for disqualification. Work requirements imposed on refugees participating in refugee resettlement programs may also be substituted, with FNS approval.

(6) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) will have Food Stamp Program work requirements waived until they are determined eligible for SSI and become exempt from Food Stamp Program work requirements, or until they are determined ineligible for SSI, at which time their exemptions from Food Stamp Program work requirements will be reevaluated.

(b) *Exemptions from work requirements.* (1) The following persons are exempt from Food Stamp Program work requirements:

(i) A person younger than 16 years of age or a person 60 years of age or older. A person age 16 or 17 who is not the head of a household or who is attending school, or is enrolled in an employment training program, on at least a half-time basis, is also exempt. If the person turns 16 (or 18 under the preceding sentence) during a certification period, the State agency must register the person as part of the next scheduled recertification process, unless the person qualifies for another exemption.

(ii) A person physically or mentally unfit for employment. For the purposes of this paragraph (b), a State agency will define physical and mental fitness; establish procedures for verifying; and will verify claimed physical or mental

unfitness when necessary. However, the State agency must not use a definition, procedure for verification, or verification that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under the State agency's program funded under title IV-A of the Social Security Act.

(iii) A person subject to and complying with any work requirement under title IV of the Social Security Act. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption.

(iv) A parent or other household member responsible for the care of a dependent child under 6 or an incapacitated person. If the child has his or her 6th birthday during a certification period, the State agency must work register the individual responsible for the care of the child as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(v) A person receiving unemployment compensation. A person who has applied for, but is not yet receiving, unemployment compensation is also exempt if that person is complying with work requirements that are part of the Federal-State unemployment compensation application process. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption with the appropriate office of the State employment services agency.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) An employed or self-employed person working a minimum of 30 hours weekly or earning weekly wages at least equal to the Federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farm workers under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this will not prevent individuals from seeking additional services from the State employment services agency). For work registration purposes, a person residing in areas of Alaska designated in §274.10(a)(4)(iv) of this chapter, who subsistence hunts and/or fishes a minimum of 30 hours weekly (averaged over the certification period) is considered exempt as self-employed. An employed or self-employed person who voluntarily and without good cause reduces his or her work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program under paragraph (j) of this section.

(viii) A student enrolled at least half-time in any recognized school, training program, or institution of higher education. Students enrolled at least half-time in an institution of higher education must meet the student eligibility requirements listed in §273.5. A student will remain exempt during normal periods of class attendance, vacation, and recess. If the student graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), the State agency must work register the individual, unless the individual qualifies for another exemption.

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of §273.12 must register for employment when the change is reported. If the State agency does not use a work registration form, it must annotate the change to the member's exemption status. If a work registration form is used, the State agency is responsible for providing the participant with a work registration form when the change is reported. Participants are responsible for returning the completed form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the participant fails to return the completed form, the State agency must issue a notice of adverse action stating that the participant is being terminated and why, but that the termination can be avoided by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of §273.12 must register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section. As part of the work registration process, the State agency must explain to the individual the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply. The State agency must provide a written statement of the above to each individual in the household who is registered for work. A notice must also be provided when a previously exempt individual or new household member becomes subject to a work requirement, and at recertification. The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to refer the individual to an E&T program, and if appropriate, referring the individual to an E&T program component. Upon entry into each component, the State agency must inform the participant, either orally or in writing, of the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV-A work program. Such systems must be proposed and explained in the State agency's E&T State Plan.

(3) The State agency must issue a notice of adverse action to an individual, or to a household if appropriate, within 10 days after learning of the individual's noncompliance with Food Stamp Program work requirements. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(4) The State agency must design and operate an E&T program that may consist of one or more or a combination of employment and/or training components as described in paragraph (e)(1) of this section. The State agency must ensure that it is notified by the agency or agencies operating its E&T components within 10 days if an E&T mandatory participant fails to comply with E&T requirements.

(5) Each component of the State agency's E&T program must be delivered through its statewide workforce development system, unless the component is not available locally through such a system.

(6) In accordance with § 272.2(d) and § 272.2(e) of this chapter, the State agency must prepare and submit an E&T Plan to its appropriate FNS Regional Office. The E&T Plan must be available for public inspection at the State agency headquarters. In its E&T Plan, the State agency will detail the following:

(i) The nature of the E&T components the State agency plans to offer and the reasons for such components, including cost information. The methodology for State agency reimbursement for education components must be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State agency that requests 50 percent Federal reimbursement for State agency E&T administrative costs, other than for participant reimbursements, must include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed, including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work. Costs in excess of the Federal grant will be allowed only with the prior approval of FNS and must be adequately documented to

assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State agency intends to exempt from E&T participation, the estimated percentage of work registrants the State agency plans to exempt, and the frequency with which the State agency plans to reevaluate the validity of its exemptions;

(iv) The characteristics of the population the State agency intends to place in E&T;

(v) The estimated number of volunteers the State agency expects to place in E&T;

(vi) The geographic areas covered and not covered by the E&T Plan and why, and the type and location of services to be offered;

(vii) The method the State agency uses to count all work registrants as of the first day of the new fiscal year;

(viii) The method the State agency uses to report work registrant information on the quarterly Form FNS–583;

(ix) The method the State agency uses to prevent work registrants from being counted twice within a Federal fiscal year. If the State agency universally work registers all food stamp applicants, this method must specify how the State agency excludes those exempt from work registration under paragraph (b)(1) of this section. If the State agency work registers nonexempt participants whenever a new application is submitted, this method must also specify how the State agency excludes those participants who may have already been registered within the past 12 months as specified under paragraph (a)(1)(i) of this section;

(x) The organizational relationship between the units responsible for certification and the units operating the E&T components, including units of the statewide workforce development system, if available. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 10 working days after the noncompliance occurs;

(xi) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services, including organizations in the statewide workforce development system, if available. Copies of contracts must be available for inspection;

(xii) The availability, if appropriate, of E&T programs for Indians living on reservations;

(xiii) If a conciliation process is planned, the procedures that will be used when an individual fails to comply with an E&T program requirement. Include the length of the conciliation period; and

(xiv) The payment rates for child care established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and based on local market rate surveys.

(xv) The combined (Federal/State) State agency reimbursement rate for transportation costs and other expenses reasonably necessary and directly related to participation incurred by E&T participants. If the State agency proposes to provide different reimbursement amounts to account for varying levels of expenses, for instance for greater or lesser costs of transportation in different areas of the State, it must include them here.

(xvi) Information about expenses the State agency proposes to reimburse. FNS must be afforded the opportunity to review and comment on the proposed reimbursements before they are implemented.

(7) A State agency interested in receiving additional funding for serving able-bodied adults without dependents (ABAWDs) subject to the 3-month time limit, in accordance with paragraph (d)(3) of this section, must include in its annual E&T plan:

(i) Its pledge to offer a qualifying activity to all at-risk ABAWD applicants and recipients;

(ii) Estimated costs of fulfilling its pledge;

(iii) A description of management controls in place to meet pledge requirements;

(iv) A discussion of its capacity and ability to serve at-risk ABAWDs;

(v) Information about the size and special needs of its ABAWD population; and

(vi) Information about the education, training, and workfare components it will offer to meet the ABAWD work requirement.

(8) The State agency will submit its E&T Plan annually, at least 45 days before the start of the Federal fiscal year. The State agency must submit plan revisions to the appropriate FNS regional office for approval if it plans to alter the nature or location of its components or the number or characteristics of persons served. The proposed changes must be submitted for approval at least 30 days prior to planned implementation.

(9) The State agency will submit an E&T Program Activity Report to FNS no later than 45 days after the end of each Federal fiscal quarter. The report will contain monthly figures for:

(i) Participants newly work registered;

(ii) Number of ABAWD applicants and recipients participating in qualifying components;

(iii) Number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and

(iv) ABAWDs subject to the 3-month time limit imposed in accordance with § 273.24(b) who are exempt under the State agency's 15 percent exemption allowance under § 273.24(g).

(10) The State agency will submit annually, on its first quarterly report, the number of work registrants in the State on October 1 of the new fiscal year.

(11) The State agency will submit annually, on its final quarterly report:

(i) A list of E&T components it offered during the fiscal year and the number of ABAWDs and non-ABAWDs who participated in each; and

(ii) The number of ABAWDs and non-ABAWDs who participated in the E&T Program during the fiscal year. Each individual must be counted only once.

(12) Additional information may be required of the State agency, on an as needed basis, regarding the type of components offered and the characteristics of persons served, depending on the contents of its E&T Plan.

(13) The State agency must ensure, to the maximum extent practicable, that E&T programs are provided for Indians living on reservations.

(14) If a benefit overissuance is discovered for a month or months in which a mandatory E&T participant has already fulfilled a work component requirement, the State agency must follow the procedure specified in paragraph (m)(6)(v) of this section for a workfare overissuance.

(15) If a State agency fails to efficiently and effectively administer its E&T program, the provisions of § 276.1(a)(4) of this chapter will apply.

(d) *Federal financial participation*—(1) *Employment and training grants*—(i) *Allocation of grants.* Each State agency will receive a 100 percent Federal grant each fiscal year to operate an E&T program in accordance with paragraph (e) of this section. The grant requires no State matching.

(A) In determining each State agency's 100 percent Federal E&T grant, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(B) of this section to the total amount of 100 percent Federal funds authorized under section 16(h)(1)(A) of the Act for each fiscal year.

(B) FNS will allocate the funding available each fiscal year for E&T grants using a formula designed to ensure that each State agency receives its appropriate share.

(*1*) Ninety percent of the annual 100 percent Federal E&T grant will be allocated based on the number of work registrants in each State as a percentage of work registrants nationwide. FNS will use work registrant data reported by each State agency on the FNS–583, Employment and Training Program Activity Report, from the most recent Federal fiscal year.

(*2*) Ten percent of the annual 100 percent Federal E&T grant will be allocated based on the number of ABAWDs in each State, as determined by food stamp QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(C) No State agency will receive less than $50,000 in Federal E&T funds. To ensure this, FNS will, if necessary, reduce the grant of each State agency allocated more than $50,000. In order to guarantee an equitable reduction, FNS will calculate grants as follows. First, disregarding those State agencies scheduled to receive less than $50,000,

FNS will calculate each remaining State agency's percentage share of the fiscal year's E&T grant. Next, FNS will multiply the grant—less $50,000 for every State agency under the minimum—by each remaining State agency's same percentage share to arrive at the revised amount. The difference between the original and the revised amounts will represent each State agency's contribution. FNS will distribute the funds from the reduction to State agencies initially allocated less than $50,000.

(D) If a State agency will not obligate or expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i)(B) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year on a first come-first served basis. Each year FNS will notify all State agencies of the availability of carryover funding. Interested State agencies must submit their requests for carryover funding to FNS. If the requests are determined reasonable and necessary, FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable. The factors that FNS will consider when reviewing a State agency's request will include the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program and proposed use of carryover funds.

(ii) *Use of Funds.* (A) A State agency must use E&T program grants to fund the administrative costs of planning, implementing and operating its food stamp E&T program in accordance with its approved State E&T plan. E&T grants must not be used for the process of determining whether an individual must be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity that takes place after the operator of an E&T component reports noncompliance without good cause. For purposes of this paragraph (d), the certification process is considered ended when an individual is referred to an E&T component for assessment or participation. E&T grants may also not be used to subsidize the wages of participants, or to reimburse participants under paragraph (d)(3) of this section.

(B) A State agency's receipt of its 100 percent Federal E&T grant is contingent on FNS's approval of the State agency's E&T plan. If an adequate plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved plans. Non-receipt of an E&T grant does not release a State agency from its responsibility under paragraph (c)(4) of this section to operate an E&T program.

(C) Federal funds made available to a State agency to operate an educational component under paragraph (e)(1)(vi) of this section must not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an E&T program.

(D) In accordance with section 6(d)(4)(K) of the Food Stamp Act, and notwithstanding any other provision of this paragraph (d), the amount of Federal E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving cash assistance under a State program funded under title IV-A of the Social Security Act must not exceed the amount of Federal E&T funds the State agency used in FY 1995 to serve participants who were receiving cash assistance under a State program funded under title IV-A of the Social Security Act.

(*1*) Based on information provided by each State agency, FNS established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado ($318,613), Utah ($10,200), Vermont ($1,484,913), and Wisconsin ($10,999,773). These State agencies may spend up to a like amount each fiscal year to serve food stamp recipients who also receive title IV assistance.

(*2*) All other State agencies are prohibited from expending any Federal

E&T funds on title IV cash assistance recipients.

(2) *Additional administrative costs.* Fifty percent of all other administrative costs incurred by State agencies in operating E&T programs, above the costs referenced in paragraph (d)(1) of this section, will be funded by the Federal government.

(3) *Additional allocations.* In addition to the E&T program grants discussed in paragraph (d)(1) of this section, FNS will allocate $20 million in Federal funds each fiscal year to State agencies that ensure availability of education, training, or workfare opportunities that permit ABAWDs to remain eligible beyond the 3-month time limit.

(i) To be eligible, a State agency must make and comply with a commitment, or ''pledge,'' to use these additional funds to defray the cost of offering a position in an education, training, or workfare component that fulfills the ABAWD work requirement, as defined in § 273.24(a), to each applicant and recipient who is:

(A) In the last month of the 3-month time limit described in § 273.24(b);

(B) Not eligible for an exception to the 3-month time limit under § 273.24(c);

(C) Not a resident of an area of the State granted a waiver of the 3-month time limit under § 273.24(f); and

(D) Not included in each State agency's 15 percent ABAWD exemption allotment under § 273.24(g).

(ii) While a participating pledge State may use a portion of the additional funding to provide E&T services to ABAWDs who do not meet the criteria discussed in paragraph (d)(3)(i) of this section, it must guarantee that the ABAWDs who do meet the criteria are provided the opportunity to remain eligible.

(iii) State agencies will have one opportunity each fiscal year to take the pledge described in paragraph (d)(3)(i) of this section. An interested State agency, in its E&T Plan for the upcoming fiscal year, must include the following:

(A) A request to be considered as a pledge State, along with its commitment to comply with the requirements of paragraph (d)(3)(i) of this section;

(B) The estimated costs of complying with its pledge;

(C) A description of management controls it has established to meet the requirements of the pledge;

(D) A discussion of its capacity and ability to serve vulnerable ABAWDs;

(E) Information about the size and special needs of the State's ABAWD population; and

(F) Information about the education, training, and workfare components that it will offer to allow ABAWDs to remain eligible.

(iv) If the information provided in accordance with paragraph (d)(3)(iii) of this section clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State.

(v) If the State agency does not address its deficiencies by the beginning of the new fiscal year on October 1, it will not be allowed to participate as a pledge State.

(vi) No pledges will be accepted after the beginning of the fiscal year.

(vii)(A) Once FNS determines how many State agencies will participate as pledge States in the upcoming fiscal year, it will, as early in the fiscal year as possible, allocate among them the $20 million based on the number of ABAWDs in each participating State, as a percentage of ABAWDs in all the participating States. FNS will determine the number of ABAWDs in each participating State using food stamp QC data for the most recently available completed fiscal year, which provide a breakdown of each State's population of adults age 18 through 49 who are not disabled and who do not live with children.

(B) Each participating State agency's share of the $20 million will be disbursed in accordance with paragraph (d)(6) of this section.

(C) Each participating State agency must meet the fiscal recordkeeping and reporting requirements of paragraph (d)(7) of this section.

(viii) If a participating State agency notifies FNS that it will not obligate

or expend its entire share of the additional funding allocated to it for a fiscal year, FNS will reallocate the unobligated, unexpended funds to other participating State agencies during the fiscal year, as it considers appropriate and equitable, on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional $20 million (if applicable). Interested pledge States must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds.

(ix) Unlike the funds allocated in accordance with paragraph (d)(1) of this section, the additional pledge funding will not remain available until obligated or expended. Unobligated funds from this grant must be returned to the U.S. Treasury at the end of each fiscal year.

(x) The cost of serving at-risk ABAWDs is not an acceptable reason to fail to live up to the pledge. A slot must be made available and the ABAWD must be served even if the State agency exhausts all of its 100 percent Federal E&T funds and must use State funds to guarantee an opportunity for all at-risk ABAWDs to remain eligible beyond the 3-month time limit. State funds expended in accordance with the approved State E&T Plan are eligible for 50 percent Federal match. If a participating State agency fails, without good cause, to meet its commitment, it may be disqualified from participating in the subsequent fiscal year or years.

(4) *Participant reimbursements.* The State agency must provide payments to participants in its E&T program, including applicants and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. The Federal government will fund 50 percent of State agency payments for allowable expenses, except that Federal matching for dependent care expenses is limited to the maximum amount specified in paragraph (d)(4)(i) of this section. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs must not include the cost of meals away from home. If applicable, any allowable costs incurred by a noncompliant E&T participant after the expiration of the noncompliant participant's minimum mandatory disqualification period, as established by the State agency, that are reasonably necessary and directly related to reestablishing eligibility, as defined by the State agency, are reimbursable under paragraphs (d)(4)(i) and (d)(4)(ii) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(4)(i) of this section; however, only costs that are up to but not in excess of those amounts are subject to Federal cost sharing. Reimbursement must not be provided from E&T grants allocated under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section is not deductible under § 273.10(d)(1)(i).

(i) The State agency will reimburse the cost of dependent care it determines to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rates for child

care are established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and are based on local market rate surveys. The State agency will provide a dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section. The State agency will not provide a reimbursement for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or is under court supervision. The State agency must provide a reimbursement for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. The State agency will obtain verification of the physical and/or mental incapacity for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, the State agency will verify a court-imposed requirement for the supervision of a dependent age 13 or older if the need for dependent care is questionable. If more than one household member is required to participate in an E&T program, the State agency will reimburse the actual cost of dependent care or the applicable payment rate for child care, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving cash assistance under title IV-A of the Social Security Act in a local area where an employment, training, or education program under title IV-A is in operation is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service (e.g., five hours per day, five days per week for two weeks). A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections (e.g., fire safety). An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency.

(ii) The State agency will reimburse the actual costs of transportation and other costs (excluding dependent care costs) it determines to be necessary and directly related to participation in the E&T program up the maximum level of reimbursement established by the State agency. Such costs are the actual costs of participation unless the State agency has a method approved in its E&T Plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses up to the maximum level of reimbursements established by the State agency.

(iii) No participant cost that has been reimbursed under a workfare program under paragraph (m)(7)(i) of this section, title IV of the Social Security Act or other work program will be reimbursed under this section.

(iv) Any portion of dependent care costs that are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(v) The State agency must inform all mandatory E&T participants that they

may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(4)(i) and (d)(4)(ii) of this section are not required to participate in that component. These individuals will be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals will be exempt from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(4)(i) of this section will be considered in determining a dependent care deduction under §273.9(d)(4).

(5) *Workfare cost sharing.* Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under paragraph (m)(7)(iv) of this section at the 50 percent reimbursement level and reported as such.

(6) *Funding mechanism.* E&T program funding will be disbursed through States' Letters of Credit in accordance with §277.5 of this chapter. The State agency must ensure that records are maintained that support the financial claims being made to FNS.

(7) *Fiscal recordkeeping and reporting requirements.* Total E&T expenditures are reported on the Financial Status Report (SF–269) in the column containing ''other'' expenses. E&T expenditures are also separately identified in an attachment to the SF–269 to show, as provided in instructions, total State and Federal E&T expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for E&T costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and paragraph (m)(7) of this section. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program will be submitted in accordance with paragraph (m)(7)(iv) of this section.

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section.

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency must entail a certain level of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months making job contacts (less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount). However, FNS may approve components that do not meet this guideline if it determines that such components will advance program goals. An initial screening by an eligibility worker to determine whom to place in an E&T program does not constitute a component. The State agency may require Food Stamp Program applicants to participate in any component it offers in its E&T program at the time of application. The State agency must not impose requirements that would delay the determination of an individual's eligibility for benefits or in issuing benefits to any household that is otherwise eligible. In accordance with section 6(o)(1)(A) of the Food Stamp Act and §273.24, job search and job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to maintain

food stamp eligibility for ABAWDs. However, job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components. An E&T program offered by a State agency must include one or more of the following components:

(i) A job search program. The State agency may require an individual to participate in job search from the time an application is filed for an initial period established by the State agency. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a job search period that, in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round job search requirement. If a reasonable period of job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24, a job search program is not a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs. However, such a program, when operated under title I of the WIA, or under section 236 of the Trade Act, is considered a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1) of the Food Stamp Act and § 273.24, a job search program is not a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs. However, such a program, when operated under title I of the WIA or under section 236 of the Trade Act, is considered a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs.

(iii) A workfare program as described in paragraph (m) of this section.

(A) The participation requirements of section 20(b) of the Food Stamp Act and paragraphs (m)(5)(i)(A) and (m)(5)(i)(B) of this section for individuals exempt from Food Stamp Program work requirements under paragraphs (b)(1)(iii) and (b)(1)(v) of this section, are not applicable to E&T workfare components.

(B) In accordance with section 20(e) of the Food Stamp Act and paragraph (m)(6)(ii) of this section, the State agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment. This job search activity is part of the workfare assignment, and not a job search ''program.'' Participants are considered to be participating in and complying with the requirements of workfare, thereby meeting the participation requirement for ABAWDs.

(C) The sharing of workfare savings authorized under section 20(g) of the Food Stamp Act and paragraph (m)(7)(iv) of this section are not available for E&T workfare components.

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience must:

(A) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(B) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a WIA or State or local program aimed at accomplishing the purpose of the E&T program.

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment. Included are programs that provide instruction for self-employment ventures.

(2) *Exemptions.* Each State agency may, at its discretion, exempt individual work registrants and categories of work registrants from E&T participation. Each State agency must periodically reevaluate its individual and categorical exemptions to determine whether they remain valid. Each State agency will establish the frequency of its periodic evaluation.

(3) *Time spent in an employment and training program.* (i) Each State agency will determine the length of time a participant spends in any E&T component it offers. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an E&T work program (including, but not limited to, those carried out under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section) combined with any hours worked that month in a workfare program under paragraph (m) of this section must not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable Federal or State minimum wage. The total hours of participation in an E&T component for any household member individually in any month, together with any hours worked in a workfare program under paragraph (m) of this section and any hours worked for compensation (in cash or in kind), must not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency must not disqualify voluntary participants in an E&T component for failure to comply with E&T requirements.

(iii) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (e)(3) of this section.

(f) *Failure to comply*—(1) *Ineligibility for failure to comply.* A nonexempt individual who refuses or fails without good cause, as defined in paragraphs (i)(2) and (i)(3) of this section, to comply with the Food Stamp Program work requirements listed under paragraph (a)(1) of this section is ineligible to participate in the Food Stamp Program, and will be considered an ineligible household member, pursuant to § 273.1(b)(7).

(i) As soon as the State agency learns of the individual's noncompliance it must determine whether good cause for the noncompliance exists, as discussed in paragraph (i) of this section. Within 10 days of establishing that the noncompliance was without good cause, the State agency must provide the individual with a notice of adverse action, as specified in § 273.13. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(ii) The notice of adverse action must contain the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may, if appropriate, reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the disqualification before the disqualification period begins. The disqualification period must begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(iii) An E&T disqualification may be imposed after the end of a certification period. Thus, a notice of adverse action must be sent whenever the State agency becomes aware of an individual's noncompliance with Food Stamp Program work requirements, even if the disqualification begins after the certification period expires and the household has not been recertified.

(2) *Disqualification periods.* The following disqualification periods will be imposed:

(i) For the first occurrence of noncompliance, the individual will be disqualified until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) One month; or

(C) Up to three months, at State agency option.

(ii) For the second occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Three months; or

(C) Up to six months, at State agency option.

(iii) For the third or subsequent occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Six months;

(C) A date determined by the State agency; or

(D) At the option of the State agency, permanently.

(3) *Record retention.* In accordance with § 272.1(f) of this chapter, State agencies are required to retain records concerning the frequency of noncompliance with FSP work requirements and the resulting disqualification actions imposed. These records must be available for inspection and audit at any reasonable time to ensure conformance with the minimum mandatory disqualification periods instituted.

(4) *Disqualification plan.* In accordance with § 272.2(d)(1)(xiii) of this chapter, each State agency must prepare and submit a plan detailing its disqualification policies. The plan must include the length of disqualification to be enforced for each occurrence of noncompliance, how compliance is determined by the State agency, and the State agency's household disqualification policy.

(5) *Household ineligibility.* (i) If the individual who becomes ineligible to participate under paragraph (f)(1) of this section is the head of a household, the State agency, at its option, may disqualify the entire household from Food Stamp Program participation.

(ii) The State agency may disqualify the household for a period that does not exceed the lesser of:

(A) The duration of the ineligibility of the noncompliant individual under paragraph (f)(2) of this section; or

(B) 180 days.

(iii) A household disqualified under this provision may reestablish eligibility if:

(A) The head of the household leaves the household;

(B) A new and eligible person joins the household as the head of the household, as defined in § 273.1(d)(2); or

(C) The head of the household becomes exempt from work requirements during the disqualification period.

(iv) If the head of the household joins another household as its head, that household will be disqualified from participating in the Food Stamp Program for the remaining period of ineligibility.

(6) *Fair hearings.* Each individual or household has the right to request a fair hearing, in accordance with § 273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with Food Stamp Program work requirements. Individuals or households may appeal State agency actions such as exemption status, the

type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component must receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency must be available through one of these means. A household must be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (that may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on the State agency.

(7) *Failure to comply with a work requirement under title IV of the Social Security Act, or an unemployment compensation work requirement.* An individual exempt from Food Stamp Program work requirements by paragraphs (b)(1)(iii) or (b)(1)(v) of this section because he or she is subject to work requirements under title IV-A or unemployment compensation who fails to comply with a title IV-A or unemployment compensation work requirement will be treated as though he or she failed to comply with the Food Stamp Program work requirement.

(i) When a food stamp household reports the loss or denial of title IV-A or unemployment compensation benefits, or if the State agency otherwise learns of a loss or denial, the State agency must determine whether the loss or denial resulted when a household member refused or failed without good cause to comply with a title IV-A or unemployment compensation work requirement.

(ii) If the State agency determines that the loss or denial of benefits resulted from an individual's refusal or failure without good cause to comply with a title IV or unemployment compensation requirement, the individual (or household if applicable under paragraph (f)(5) of this section) must be disqualified in accordance with the applicable provisions of this paragraph (f). However, if the noncomplying individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section (other than the exemptions provided in paragraphs (b)(1)(iii) or (b)(1)(v) of this section) the individual (or household if applicable under paragraph (f)(5) of this section) will not be disqualified.

(iii) If the State agency determination of noncompliance with a title IV-A or unemployment compensation work requirement leads to a denial or termination of the individual's or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of paragraph (f)(6) of this section.

(iv) In cases where the individual is disqualified from the title IV-A program for refusal or failure to comply with a title IV-A work requirement, but the individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section, other than the exemption in paragraphs (b)(1)(iii) of this section, the State agency may, at its option, apply the identical title IV-A disqualification on the individual under the Food Stamp Program. The State agency must impose such optional disqualifications in accordance with section 6(i) of the Food Stamp Act and with the provisions of § 273.11(1).

(g) *Ending disqualification.* Except in cases of permanent disqualification, at the end of the applicable mandatory disqualification period for noncompliance with Food Stamp Program work requirements, participation may resume if the disqualified individual applies again and is determined by the State agency to be in compliance with work requirements. A disqualified individual may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work requirements.

(h) *Suitable employment.* (1) Employment will be considered suitable unless:

(i) The wage offered is less than the highest of the applicable Federal minimum wage, the applicable State minimum wage, or eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (h)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(v) It fails to meet additional suitability criteria established by State agencies.

(2) In addition, employment will be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment will not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor will employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs.

(i) *Good Cause.* (1) The State agency is responsible for determining good cause when a food stamp recipient fails or refuses to comply with Food Stamp Program work requirements. Since it is not possible for the Department to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the employer and by the household member involved, in determining whether or not good cause exists.

(2) Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(3) Good cause for leaving employment includes the good cause provisions found in paragraph (i)(2) of this section, and resigning from a job that is unsuitable, as specified in paragraphs (h)(1) and (h)(2) of this section. Good cause for leaving employment also includes:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance of employment by the individual, or enrollment by the individual in any recognized school, training program or institution of higher education on at least a half time basis, that requires the individual to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another

county or similar political subdivision that requires the household to move and thereby requires the individual to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment that becomes unsuitable, as specified in paragraphs (h)(1) and (h)(2) of this section, after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 30 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 30 hours that, because of circumstances beyond the individual's control, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 30 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment must be considered as with good cause if it is part of the pattern of that type of employment.

(4) *Verification*. To the extent that the information given by the household is questionable, as defined in §273.2(f)(2), State agencies must request verification of the household's statements. The primary responsibility for providing verification, as provided in §273.2(f)(5), rests with the household.

(j) *Voluntary quit and reduction of work effort*—(1) *Period for establishing voluntary quit and reduction of work effort*. For the purpose of establishing that a voluntary quit without good cause or reduction in work effort without good cause occurred prior to applying for food stamps, a State agency may, at its option, choose a period between 30 and 60 days before application in which to determine voluntary quit or reduction in work effort.

(2) *Individual ineligibility*. An individual is ineligible to participate in the Food Stamp Program if, in a period established by the State agency between 30 and 60 day before applying for food stamp benefits or at any time thereafter, the individual:

(i) Voluntarily and without good cause quits a job of 30 hours a week or more; or

(ii) Reduces his or her work effort voluntarily and without good cause and, after the reduction, is working less than 30 hours per week.

(3) *Determining whether a voluntary quit or reduction of work effort occurred and application processing*. (i) When a household files an application for participation, or when a participating household reports the loss of a source of income or a reduction in household earnings, the State agency must determine whether any household member voluntarily quit his or her job or reduced his or her work effort. Benefits must not be delayed beyond the normal processing times specified in §273.2 pending the outcome of this determination.

(ii) The voluntary quit provision applies if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within a period established by the State agency between 30 to 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this paragraph (j). An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own, loses the new job, the individual must not be disqualified for the earlier quit.

(iii) The reduction of work effort provision applies if, before the reduction, the individual was employed 30 hours or more per week; the reduction occurred within a period established by the State agency between 30 and 60 days prior to the date of application or anytime thereafter; and the reduction was voluntary and without good cause. If the individual reduces his or her work hours to less than 30 a week, but continues to earn weekly wages that exceed the Federal minimum wage multiplied by 30 hours, the individual remains exempt from Program work requirements, in accordance with paragraph (b)(1)(vii) of this section, and the reduction in work effort provision does not apply. Minor variations in the number of hours worked or in the weekly minimum wage equivalent wages are inevitable and must be taken into consideration when assessing a recipient's compliance with Program work rules.

(iv) In the case of an applicant household, the State agency must determine if any household member subject to Food Stamp Program work requirements voluntarily quit his or her job or reduced his or her work effort within a period established by the State agency between 30 and 60 days prior to date of application. If the State agency learns that a household has lost a source of income or experienced a reduction in income after the date of application but before the household is certified, the State agency must determine whether a voluntary quit or reduction in work effort occurred.

(v) Upon determining that an individual voluntarily quit employment or reduced work effort, the State agency must determine if the voluntary quit or reduction of work effort was with good cause as defined in paragraph (i) of this section.

(vi) In the case of an individual who is a member of an applicant household, if the voluntary quit or reduction in work effort was without good cause, the individual will be determined ineligible to participate and will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(7). The disqualification is effective upon the determination of eligibility for the remaining household members. If the individual who becomes ineligible is the head of the household, as defined in § 273.1(d)(2), the State agency may choose to disqualify the entire household, in accordance with paragraph (f)(5) of this section. If the State agency chooses to disqualify the household, the State agency must provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice must inform the household of the proposed period of disqualification; its right to reapply at the end of the disqualification period; and of its right to a fair hearing. The household's disqualification is effective upon the issuance of the notice of denial.

(vii) In the case of an individual who is a member of a participating household, if the State agency determines that the individual voluntarily quit his or her job or reduced his or her work effort without good cause while participating in the program or discovers that the individual voluntarily quit his or her job or reduced his or her work effort without good cause during a period established by the State agency between 30 and 60 days prior to the date of application for benefits or between application and certification, the State agency must provide the individual with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit or reduction in work effort. The notification must contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions that may be taken to avoid the disqualification, and it must specify that the individual, if otherwise eligible, may resume participation at the end of the disqualification period if the State agency determines the individual to be in compliance with Program work requirements. The individual will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(7). The disqualification period will begin

the first month following the expiration of the 10-day adverse notice period, unless the individual requests a fair hearing. If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period, beginning with the day after the last certification period ends and continuing for the length of the disqualification, regardless of whether the individual reapplies for food stamps. Each individual has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the individual voluntarily quit his or her job or reduced his or her work effort without good cause. If the participating individual's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period must begin the first of the month after the hearing decision is rendered.

(viii) If the individual who voluntarily quit his or her job, or who reduced his or her work effort without good cause is the head of a household, as defined in § 273.1(d), the State agency, at its option, may disqualify the entire household from Food Stamp Program participation in accordance with paragraph (f)(5) of this section.

(4) *Ending a voluntary quit or a reduction in work disqualification.* Except in cases of permanent disqualification, following the end of the mandatory disqualification period for voluntarily quitting a job or reducing work effort without good cause, an individual may begin participation in the program if he or she reapplies and is determined eligible by the State agency. Eligibility may be reestablished during a disqualification and the individual, if otherwise eligible, may be permitted to resume participation if the individual becomes exempt from Program work requirements under paragraph (b)(1) of this section.

(5) *Application in the final month of disqualification.* Except in cases of permanent disqualification, if an application for participation in the Program is filed in the final month of the mandatory disqualification period, the State agency must, in accordance with § 273.10(a)(3), use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(k) *Employment initiatives program*—(1) *General.* In accordance with section 17(d)(1)(B) of the Food Stamp Act, qualified State agencies may elect to operate an employment initiatives program, in which an eligible household can receive the cash equivalent of its food stamp coupon allotment.

(2) *State agency qualification.* A State agency qualifies to operate an employment initiatives program if, during the summer of 1993, at least half of its food stamp households also received cash benefits from a State program funded under title IV-A of the Social Security Act.

(3) *Qualified State agencies.* The State agencies of Alaska, California, Connecticut, the District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin meet the qualification. These 10 State agencies may operate an employment initiatives program.

(4) *Eligible households.* A food stamp household in one of the 10 qualified State agencies may receive cash benefits in lieu of a food stamp coupon allotment if it meets the following requirements:

(i) The food stamp household elects to participate in an employment initiatives program;

(ii) An adult member of the household:

(A) Has worked in unsubsidized employment for the last 90 days, earning a minimum of $350 per month;

(B) Is receiving cash benefits under a State program funded under title IV-A of the Social Security Act; or

(C) Was receiving cash benefits under the State program but, while participating in the employment initiatives program, became ineligible because of earnings and continues to earn at least $350 a month from unsubsidized employment.

(5) *Program Provisions.* (i) Cash benefits provided in an employment initiatives program will be considered an allotment, as defined at § 271.2 of this chapter.

(ii) An eligible household receiving cash benefits in an employment initiatives program will not receive any other food stamp benefit during the period for which cash assistance is provided.

(iii) A qualified State agency operating an employment initiatives program must increase the cash benefit to participating households to compensate for any State or local sales tax on food purchases, unless FNS determines that an increase is unnecessary because of the limited nature of items subject to the State or local sales tax.

(iv) Any increase in cash assistance to account for a State or local sales tax on food purchases must be paid by the State agency.

(6) *Evaluation.* After two years of operating an employment initiatives program, a State agency must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide FNS with a written report of its evaluation findings. The State agency, with the concurrence of FNS, will determine the content of the evaluation.

(l) *Work supplementation program.* In accordance with section 16(b) of the Food Stamp Act, States may operate work supplementation (or support) programs that allow the cash value of food stamp benefits and public assistance, such as cash assistance authorized under title IV-A of the Social Security Act or cash assistance under a program established by a State, to be provided to employers as a wage subsidy to be used for hiring and employing public assistance recipients. The goal of these programs is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into unsubsidized jobs. In accordance with § 272.2(d)(1)(xiv) of this chapter, State agencies that wish to exercise their option to implement work supplementation programs must submit to FNS for approval a plan that complies with the provisions of this paragraph (l). Work supplementation programs may not be implemented without prior approval from FNS.

(1) *Plan*—(i) *Assurances.* The plan must contain the following assurances:

(A) The individual participating in a work supplementation program must not be employed by the employer at the time the individual enters the program;

(B) The wage subsidy received under the work supplementation program must be excluded from household income and resources during the term the individual is participating in work supplementation;

(C) The household must not receive a separate food stamp allotment while participating in the work supplementation program;

(D) An individual participating in a work supplementation program is excused from meeting any other work requirements;

(E) The work supplementation program must not displace any persons currently employed who are not supplemented or supported;

(F) The wage subsidy must not be considered income or resources under any Federal, State or local laws, including but not limited to, laws relating to taxation, welfare, or public assistance programs, and the household's food stamp allotment must not be decreased due to taxation or any other reason because of its use as a wage subsidy;

(G) The earned income deduction does not apply to the subsidized portion of wages received in a work supplementation program; and

(H) All work supplemented or supported employees must receive the same benefits (sick and personal leave, health coverage, workmen's compensation, etc.) as similarly situated coworkers who are not participating in work supplementation and wages paid under a wage supplementation or support program must meet the requirements of the Fair Labor Standards Act and other applicable employment laws.

(ii) *Description.* The plan must also describe:

(A) The procedures the State agency will use to ensure that the cash value of food stamp benefits for participating households are not subject to State or local sales taxes on food purchases. The

costs of increasing household food stamp allotments to compensate for such sales taxes must be paid from State funds;

(B) State agency, employer and recipient obligations and responsibilities;

(C) The procedures the State agency will use to provide wage subsidies to employers and to ensure accountability;

(D) How public assistance recipients in the proposed work supplementation program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported;

(E) Whether the food stamp allotment and public assistance grant will be frozen at the time a recipient begins a subsidized job; and

(F) The procedures the State agency will use to ensure that work supplementation program participants do not incur any Federal, State, or local tax liabilities on the cash value of their food stamp benefits.

(2) *Budget*. In addition to the plan described in paragraph (l)(1) of this section, an operating budget for the proposed work supplementation program must be submitted to FNS.

(3) *Approval*. FNS will review the initial plan and any subsequent amendments. Upon approval by FNS, the State agency must incorporate the approved work supplementation program plan or subsequent amendment into its State Plan of Operation and its operating budget must be included in the State agency budget. No plan or amendment may be implemented without approval from FNS.

(4) *Reporting*. State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to employers as a wage subsidy on the FNS–388, State Issuance and Participation Estimates; FNS–388A, Participation and Issuance by Project Area; FNS–46, Issuance Reconciliation Report; and SF–269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

(5) *Funding*. FNS will pay the cash value of a participating household's food stamp benefits to a State agency with an approved work supplementation program to pay to an employer as a wage subsidy, and will also reimburse the State agency for related administrative costs, in accordance with Section 16 of the Food Stamp Act.

(6) *Quality control*. Cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

(m) *Optional workfare program*—(1) *General*. This paragraph (m) contains the rules to be followed in operating a food stamp workfare program. In workfare, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(2) *Program administration*. (i) A food stamp workfare program may be operated as a component of a State agency's E&T program, or it may be operated independently. If the workfare program is part of an E&T program it must be included as a component in the State agency's E&T plan in accordance with the requirements of paragraph (c)(4) of this section. If it is operated independent of the E&T program, the State agency must submit a workfare plan to FNS for its approval. For the purpose of this paragraph (m), a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State agency's workfare or E&T plan.

(ii) Political subdivisions are encouraged, but not required, to submit their plans to FNS through their respective State agencies. At a minimum, however, plans must be submitted to the State agencies concurrent with their submission to FNS. Workfare plans and

subsequent amendments must not be implemented prior to their approval by FNS.

(iii) When a State agency chooses to sponsor a workfare program by submitting a plan to FNS, it must incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FNS, the State agency is responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (m)(4) of this section. When it is notified that FNS has approved a workfare plan submitted by a political subdivision in its State, the State agency must append that political subdivision's workfare plan to its own State Plan of Operations.

(iv) The operating agency is the administrative organization identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this paragraph (m). The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision that submitted the workfare plan is responsible for monitoring the operating agency's compliance with the requirements of this paragraph (m) or of the workfare plan. The Department may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision that submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies, have failed to comply with the requirements of this paragraph (m) or of the workfare plan.

(v) State agencies or other political subdivisions must describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, will fulfill the provisions of this paragraph (m). The plan will be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(vi) State agencies or political subdivisions submitting a workfare plan must submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operation must be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget must be included in the State agency's budget.

(vii) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department will determine which political subdivision will have its plan approved. Under no circumstances will a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(3) *Operating agency responsibilities*. (i) *General*. The operating agency, as designated by the State agency or other political subdivision that submits a plan, is responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this paragraph (m).

(ii) *Establishment of job sites*. Workfare job slots may only be located in public or private nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs that include, but are not limited to, designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(iii) *Notifying State agency of noncompliance*. The operating agency must notify the State agency of noncompliance by an individual with a workfare obligation when it determines that the

individual did not have good cause for the noncompliance. This notification must occur within five days of such a determination so that the State agency can make a final determination as provided in paragraph (m)(4)(iv) of this section.

(iv) *Notifications.* (A) State agencies must establish and use notices to notify the operating agency of workfare-eligible households. The notice must include the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, it must also include this in the notice. If the operating agency is computing the hours to be worked, include the monthly allotment amount.

(B) Operating agencies must establish and use notices to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(C) Operating agencies must establish and use notices to notify the State agency of failure by a household to meet its workfare obligation.

(v) *Recordkeeping requirements.* (A) Files that record activity by workfare participants must be maintained. At a minimum, these records must contain job sites, hours assigned, and hours completed.

(B) Program records must be maintained, for audit and review purposes, for a period of 3 years from the month of origin of each record. Fiscal records and accountable documents must be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph (m), means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph (m), means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records must be kept in a manner that will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (m)(7)(iii) of this section.

(vi) *Reporting requirements.* The operating agency is responsible for providing information needed by the State agency to fulfill the reporting requirements contained in paragraph (m)(4)(v) of this section.

(vii) *Disclosure.* The provisions of § 272.1(c) of this chapter restricting the use and disclosure of information obtained from food stamp households is applicable to the administration of the workfare program.

(4) *State agency responsibilities.* (i) If a political subdivision chooses to operate a workfare program, the State agency must cooperate with the political subdivision in developing a plan.

(ii) The State agency must determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (m)(5)(i) of this section must be referred to the organization which is the operating agency. The information identified in paragraph (m)(3)(iv)(A) of this section must be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(iii) The State agency must inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(iv) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency must make a final determination as to whether or not the failure occurred and whether there was good cause for the failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction must be processed as

provided in paragraphs (f)(1)(i) and (f)(1)(ii) of this section. The State agency must immediately inform the operating agency of the months during which the sanction will apply.

(v) The State agency must submit quarterly reports to FNS within 45 days of the end of each quarter identifying for that quarter for that State:

(A) The number of households with workfare-eligible recipients referred to the operating agency. A household will be counted each time it is referred to the operating agency;

(B) The number of households assigned to jobs each month by the operating agency;

(C) The number of individuals assigned to jobs each month by the operating agency;

(D) The total number of hours worked by participants; and

(E) The number of individuals against which sanctions were applied. An individual being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(vi) The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FNS. Should the State agency assume this responsibility, it would act as agent for FNS, which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FNS directs otherwise.

(5) *Household responsibilities.* (i) *Participation requirement.* Participation in workfare, if assigned by the State agency, is a Food Stamp Program work requirement for all nonexempt household members, as provided in paragraph (a) of this section. In addition:

(A) Those recipients exempt from Food Stamp Program work requirements because they are subject to and complying with any work requirement under title IV of the Social Security Act are subject to workfare if they are currently involved less than 20 hours a week in title IV work activities. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision; and

(B) Those recipients exempt from Food Stamp Program work requirements because they have applied for or are receiving unemployment compensation are subject to workfare.

(ii) *Household obligation.* The maximum total number of hours of work required of a household each month is determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month.

(6) *Other program requirements.* (i) *Conditions of employment.* (A) A participant may be required to work a maximum of 30 hours per week. This maximum must take into account hours worked in any other compensated capacity (including hours of participation in a title IV work program) by the participant on a regular or predictable part-time basis. With the participant's consent, the hours to be worked may be scheduled in such a manner that more than 30 hours are worked in one week, as long as the total for that month does not exceed the weekly average of 30 hours.

(B) No participant will be required to work more than eight hours on any given day without his or her consent.

(C) No participant will be required to accept an offer of workfare employment if it fails to meet the criteria established in paragraphs (h)(1)(iii), (h)(1)(iv), (h)(2)(i), (h)(2)(ii), (h)(2)(iv), and (h)(2)(v) of this section.

(D) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements; other Food Stamp Program work requirements established in paragraph (a)(1) of this section; or the job search requirements established in paragraph (e)(1)(i) of this section, that inability must not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency must, if possible, reschedule the missed activity. If the

rescheduling cannot be completed before the end of the month, that must not be considered as cause for disqualification.

(E) The operating agency must assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These are benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit that requires a cash contribution by the participant will be optional at the discretion of the participant.

(F) The operating agency must assure that all workfare participants experience the same working conditions that are provided to non-workfare employees similarly employed.

(G) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Public Law 89–286), relating to health and safety conditions, apply to the workfare program.

(H) Operating agencies must not place a workfare participant in a work position that has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies due to hiring freezes, terminations, or lay-offs must not be filled by workfare participants unless it can be demonstrated that the vacancies are a result of insufficient funds to sustain former staff levels.

(I) Workfare jobs must not, in any way, infringe upon the promotional opportunities that would otherwise be available to regular employees.

(J) Workfare jobs must not be related in any way to political or partisan activities.

(K) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (m)(7) of this section. However, whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site). The Department does not assume liability for any injury to or death of a workfare participant while on the job.

(L) The nondiscrimination requirement provided in § 272.6(a) of this chapter applies to all agencies involved in the workfare program.

(ii) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under this section during this time.

(iii) *Participant reimbursement.* The operating agency must reimburse participants for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs may not include the cost of meals away from home. No participant cost reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program may be reimbursed under the food stamp workfare program. Only reimbursement of participant costs up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (m)(7) of this section. Reimbursed child care costs may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. In accordance with paragraph (m)(4)(i) of this section, a State agency may decide what its reimbursement policy shall be.

(iv) *Failure to comply.* When a workfare participant is determined by the State agency to have failed or refused without good cause to comply with the requirements of this paragraph (m), the provisions of paragraph (f) of this section will apply.

(v) *Benefit overissuances.* If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency must apply the claim recovery procedures as follows:

(A) If the person who performed the work is still subject to a work obligation, the State must determine how may extra hours were worked because of the improper benefit. The participant should be credited those extra hours toward future work obligations; and

(B) If a workfare or work component requirement does not continue, the State agency must determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency must determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim must be established for the amount of the overissuance not ''worked off,'' if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim will be established. No credit for future work requirements will be given.

(7) *Federal financial participation*—(i) *Administrative costs.* Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program will be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to $25 per month for any participant, as indicated in paragraph (m)(6)(iii) of this section. Such costs do not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of $25 per month for any participant. State agencies must not use any portion of their annual 100 percent Federal E&T allocations to fund the administration of optional workfare programs under section 20 of the Food Stamp Act and this paragraph (m).

(ii) *Funding mechanism.* The State agencies have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency must also assure that records are being maintained which support the financial claims being made to FNS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(iii) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs must be identified by the State agency on the Financial Status Report (Form SF–269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds must be maintained in accordance with § 277.12 of this chapter.

(iv) *Sharing workfare savings*—(A) *Entitlement.* A political subdivision is entitled to share in the benefit reductions that occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.

(1) To begin employment means to appear at the place of employment and to begin working.

(2) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation that does not end the first participation will be due to the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(B) *Calculating the benefit reductions.* The political subdivision will calculate benefit reductions from each workfare participant's employment as follows.

(*1*) Unless the political subdivision knows otherwise, it will presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment that reflects a full month's wages, earned income deduction, and dependent care deduction attributable to the new job.

(*2*) If the political subdivision knows of other changes besides the new job that affect the household's allotment after the new job began, the political subdivision will obtain the first allotment affected by an entire month's wages from the new job. The political subdivision will then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision will also replace any benefits from a State program funded under title IV-A of the Social Security Act received after the new job with benefits received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment will be the benefit reduction.

(*3*) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(*4*) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment must be corrected before the savings are calculated.

(C) *Accounting*. The reimbursement from workfare will be reported and paid as follows:

(*1*) The political subdivision will report its enhanced reimbursement to the State agency in accordance with paragraph (m)(7)(iii) of this section.

(*2*) The Food and Nutrition Service will reimburse the political subdivision in accordance with paragraph (m)(7)(ii) of this section.

(*3*) The political subdivision will, upon request, make available for review sufficient documentation to justify the amount of the enhanced reimbursement.

(*4*) The Food and Nutrition Service will reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (m)(7)(i) of this section.

(8) *Voluntary workfare program*. State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalties for failure to comply, as provided in paragraph (f) of this section, will not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (m)(5)(ii) of this section. In addition, all protections provided under paragraph (m)(6)(i) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criterion, the Department reserves the right to withdraw approval.

(9) *Comparable workfare programs*. In accordance with section 6(o)(2)(C) of the Food Stamp Act, State agencies and political subdivisions may establish programs comparable to workfare under this paragraph (m) for the purpose of providing ABAWDs subject to the time limits specified at § 273.24 a means of fulfilling the work requirements in order to remain eligible for food stamps. While comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, these programs may or may not conform to other workfare requirements. State agencies or political subdivisions desiring to operate a comparable workfare program must meet the following conditions:

(i) The maximum number of hours worked weekly in a comparable workfare activity, combined with any other hours worked during the week by a participant for compensation (in cash or in kind) in any other capacity, must not exceed 30;

(ii) Participants must not receive a fourth month of food stamp benefits (the first month for which they would not be eligible under the time limit) without having secured a workfare position or without having met their workfare obligation. Participation must be verified timely to prevent issuance of a month's benefits for which the required work obligation is not met;

(iii) The State agency or political subdivision must maintain records to support the issuance of benefits to comparable workfare participants beyond the third month of eligibility; and

(iv) The State agency or political subdivision must provide a description of its program, including a methodology for ensuring compliance with (m)(9)(ii) of this section. The description should be submitted to the appropriate Regional office, with copies forwarded to the Food Stamp Program National office.

[67 FR 41603, June 19, 2002, as amended at 71 FR 33382, June 9, 2006]

Subpart D—Eligibility and Benefit Levels

§ 273.8 Resource eligibility standards.

(a) *Uniform standards.* The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet the resource limits or definitions in this section.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $2,000 for the household, except that, for households including one or more disabled members or a member or members age 60 or over, such resources shall not exceed $3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (f) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(3) For a household containing a sponsored alien, the State agency must deem the resources of the sponsor and the sponsor's spouse in accordance with § 273.4(c)(2).

(d) *Jointly owned resources.* Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the

agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or disqualified individuals residing with the household shall be considered household members. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in § 271.2, if

(1) The resources are jointly owned by such persons and by members of their former household; and

(2) The shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed $1,500 in equity value, in which event the value above $1,500 is counted. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3)(i) Licensed vehicles that meet the following conditions:

(A) Used for income-producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles that have previously been used by a self-employed household member engaged in farming but are no longer used in farming because the household member has terminated his/her self-employment from farming must continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment farming;

(B) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(C) Necessary for long-distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household)—for example, the vehicle of a traveling sales person or a migrant farm worker following the work stream;

(D) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section;

(E) Necessary to transport a physically disabled household member (or physically disabled ineligible alien or physically disabled disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(F) Necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the

State agency may require documentation from the household, in accordance with § 273.2(f)(4).

(G) The value of the vehicle is inaccessible, in accordance with paragraph (e)(18) of this section, because its sale would produce an estimated return of not more than $1,500.

(ii) On those Indian reservations that do not require vehicles driven by tribal members to be licensed, such vehicles must be treated as licensed vehicles for the purpose of this exclusion.

(iii) The exclusions in paragraphs (e)(3)(i)(A) through (e)(3)(i)(C) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.

(5) Property, such as farm land or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from nonhousehold funds by a nonhousehold member.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income is explained in § 273.10(c) and the treatment

of self-employment income is explained in § 273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute.

(12) Earned income tax credits shall be excluded as follows:

(i) A Federal earned income tax credit received either as a lump sum or as payments under section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.

(ii) Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation of one month or less due to administrative reasons, such as delayed recertification or missing or late monthly reports, shall not be considered as nonparticipation in determining the 12-month exclusion.

(13) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or disqualified household member (in accordance with paragraph (e)(2) of this section).

(14) Energy assistance payments or allowances excluded as income under § 273.9(c)(11).

(15) Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

(16) Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under paragraphs (e)(3)(i)(A), (e)(3)(i)(B) or (e)(3)(i)(C) of this section. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. For purposes of this paragraph (e)(17), if an individual receives noncash or in-kind services from a program specified in §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B), the State agency must determine whether the individual or the household benefits from the assistance provided, in accordance with § 273.2(j)(2)(iii). Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in

accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

(i) ''Significant return'' means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than $1,500; and

(ii) ''Any significant amount of funds'' means funds amounting to more than $1,500.

(19) At State agency option, any resources that the State agency excludes when determining eligibility or benefits for TANF cash assistance, as defined by 45 CFR 260.31 (a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA. Resource exclusions under TANF and Section 1931 programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA shall not be excluded under this paragraph (e)(19). Additionally, licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)(2)(C) or (D)), cash on hand, amounts in any account in a financial institution that are readily available to the household including money in checking or savings accounts, savings certificates, stocks, or bonds shall also not be excluded. The term ''readily available'' applies to resources that the owner can simply withdraw from a financial institution. State agencies may exclude deposits in individual development accounts (IDAs). A State agency that chooses to exclude resources under this paragraph (e)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded.

(f) *Determining the value of non-excluded vehicles.* (1) The State agency must:

(i) Individually evaluate the fair market value of each licensed vehicle that is not excluded under paragraph (e)(3) of this section;

(ii) Count in full toward the household's resource level, regardless of any encumbrances on the vehicle, that portion of the fair market value that exceeds $4,650 beginning October 1, 1996;

(iii) Evaluate such licensed vehicles as well as all unlicensed vehicles for their equity value (fair market value less encumbrances), unless specifically exempt from the equity value test; and

(iv) Count as a resource only the greater of the two amounts if the vehicle has a countable fair market value of more than $4,650 after October 1, 1996, and also has a countable equity value.

(2) Only the following vehicles are exempt from the equity value test outlined in paragraph (f)(1)(iii) of this section:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle; and

(iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

(3) State agencies will be responsible for establishing methodologies for determining the fair market value of vehicles. In establishing such methodologies, the State agency must not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment or special apparatus for the handicapped. Any household that claims that the State agency's determination of the value of its vehicle(s) is not accurate must be given the opportunity to acquire verification of the true value of the vehicle from a reliable source.

(4) A State agency may substitute for the vehicle evaluation provisions in paragraphs (f)(1) through (f)(3) of this section the vehicle evaluation provisions of a program in that State that uses TANF or State or local funds to meet TANF maintenance of effort requirements and provides benefits that meet the definition of ''assistance'' according to TANF regulations at 45 CFR 260.31, where doing so results in a lower attribution of resources to the household. States electing this option must:

(i) Apply the substituted TANF vehicle rules to all food stamp households in the State, whether or not they receive or are eligible to receive TANF assistance of any kind;

(ii) Exclude from household resources any vehicles excluded by either the substituted TANF vehicle rules or the food stamp vehicle rules at paragraphs (e)(3), (e)(5), (e)(11) and (f) of this section;

(iii) Apply either the substituted TANF rules or the food stamp vehicle rules to each of a household's vehicles in turn, using whichever set of rules produces the lower attribution of resources to the household;

(iv) Apply any vehicle exclusions allowed by their TANF vehicle rules to the vehicles with the highest values; and

(v) Exclude any vehicle owned by any household in the State if it selects TANF vehicle rules that exclude all vehicles completely or contain no resource provisions at all.

(g) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph (e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(h) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers:

(i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

(ii) Resources which are sold or traded at, or near, fair market value;

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

(iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for

the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. The following chart will be used to determine the period of disqualification.

Amount in excess of the resource limit	Period of disqualification (months)
$0 to 249.99	1
250 to 999.99	3
1,000 to 2999.99	6
3,000 to 4,999.99	9
5,000 or more	12

(i) *Resources of non-household members.* (1) The resources of non-household members, as defined in § 273.1(b)(7)(i) and (ii), must be handled as outlined in § 273.11(d).

(2) The resources of non-household members, as defined in § 273.1(b)(7)(iii) through (vi), must be handled as outlined in § 273.11(c) and (d), as appropriate.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligiblity standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in tables posted on the FNS web site, at *www.fns.usda.gov/fsp*.

(b) *Definition of income*. Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include: (i) All wages and salaries of an employee.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder, except foster care boarders, shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program, to the extent they are not a reimbursement. Training allowances under Job Training Partnership Act, other than earnings as specified in paragraph (b)(1)(v) of this section, are excluded from consideration as income.

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113 Stat., as amended) shall be considered earned income and subject to the earned income deduction prescribed in §273.10(e)(1)(i)(B), excluding payments made to those households specified in paragraph (c)(10)(iii) of this section.

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid under the Workforce Investment Act and monies paid by the employer.

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under §273.9(c)(3). Earned income from work study programs that are funded under section 20 U.S.C. 1087uu of the Higher Education Act is excluded.

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs (as defined in §271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to

repay claims for intentional program violations as provided in § 272.12; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, deferred payment loans for education, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of paragraph (c) of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of paragraph (c) of this section.

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with § 273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with § 273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN, in accordance with § 273.6, or for being an ineligible alien, in accordance with § 273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in § 273.11(c).

(4) For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with § 273.4(c)(2).

(5) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section. However, moneys withheld from assistance from another program, as specified in § 273.11(k), shall be included as income.

(ii) Child support payments received by TANF recipients which must be transferred to the agency administering title IV-D of the Social Security Act, as amended, to maintain TANF eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments made through a State or local housing authority;

(F) *Emergency and special assistance.* PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an ''extra'' payment excluded under this provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FNS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Energy assistance (as defined in paragraph (c)(11) of this section);

(B) Housing assistance from a State or local housing authority;

(C) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(D) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(E) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments

which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of $400. Later, $200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of $400 a month and in addition orders $200 to be paid directly to a bank for repayment of a loan. The $400 payment is counted as income and the $200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Received under 20 CFR 1087uu. This exemption includes student assistance received under part E of subchapter IV of Chapter 28 of title 20 and part C of subchapter I of chapter 34 of title 42, or under Bureau of Indian Affairs student assistance programs.

(B) Awarded to a household member enrolled at a:

(*1*) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(*2*) School for the handicapped,

(*3*) Vocational education program,

(*4*) Vocational or technical school,

(*5*) Program that provides for obtaining a secondary school diploma or the equivalent;

(C) Used for or identified (earmarked) by the institution, school, program, or

other grantor for the following allowable expenses:

(*1*) Tuition,

(*2*) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(*3*) Books,

(*4*) Supplies,

(*5*) Transportation,

(*6*) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(*7*) Dependent care,

(*8*) Origination fees and insurance premiums on educational loans,

(*9*) Normal living expenses which are room and board are not excludable.

(*10*) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions of paragraph § 273.9(c)(5)(i)(C). Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph § 273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(C) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(v) At its option, the State agency may exclude any educational assistance that must be excluded under its State Medicaid rules that would not already be excluded under this section. A State agency that chooses to exclude educational assistance under this paragraph (c)(3)(v) must specify in its State plan of operation that it has selected this option and provide a description of the educational assistance that is being excluded. The provisions of paragraphs (c)(3)(ii), (c)(3)(iii) and (c)(3)(iv) of this section do not apply to income excluded under this paragraph (c)(3)(v).

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive.

(i) Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(A) Reimbursements or flat allowances, including reimbursements made to the household under § 273.7(d)(3), for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(B) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(C) Medical or dependent care reimbursements.

(D) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(E) Any allowance a State agency provides no more frequently than annually for children's clothes when the children enter or return to school or daycare, provided the State agency does not reduce the monthly TANF payment for the month in which the school clothes allowance is provided. State agencies are not required to verify attendance at school or daycare.

(F) Reimbursements made to the household under § 273.7(d)(3) for expenses necessary for participation in an education component under the E&T program.

(ii) The following shall not be considered a reimbursement excludable under this provision:

(A) No portion of benefits provided under title IV-A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 18, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the

payment is not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1). These payments shall be counted as resources in the month received, in accordance with § 273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a));

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113) as amended. Payments under title I of that Act (including payments from such title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the title I program, except that households which were receiving an income exclusion for a Vista or other title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977 shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income. The FNS National Office shall keep FNS Regional Offices informed of any new programs created under title I and II or changes in programs mentioned above so that they may alert State agencies.

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, section 6).

(v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90–300), except as provided for under paragraph (b)(1)(v) of this section.

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

(vii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

(viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433).

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5).

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

(11) Energy assistance as follows:

(i) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.), including utility reimbursements made by the Department of Housing and Urban Development and the Rural Housing Service, or

(ii) A one-time payment or allowance applied for on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down-payment followed by a final payment upon completion of the work will be considered a one-time payment for purposes of this provision.

(12) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed $300 in a Federal fiscal year quarter.

(13) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(14) Any payment made to an E&T participant under § 273.7(d)(3) for costs that are reasonably necessary and directly related to participation in the E&T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(3)(i) would be excluded.

(15) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with § 273.1(c).

(16) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(17) Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. However, at its option, the State agency may allow households a deduction for such child support payments in accordance with paragraph (d)(5) of this section rather than an income exclusion.

(18) At the State agency's option, any State complementary assistance program payments excluded for the purpose of determining eligibility under section 1931 of the SSA for a program funded under Title XIX of the SSA. A State agency that chooses to exclude complementary assistance program payments under this paragraph (c)(18) must specify in its State plan of operation that it has selected this option and provide a description of the types of payments that are being excluded.

(19) At the State agency's option, any types of income that the State agency excludes when determining eligibility or benefits for TANF cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA). The State agency must exclude for food stamp purposes the same amount of income it excludes for TANF or Medicaid purposes. A State agency that chooses to exclude income under this paragraph (c)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded. The State agency shall not exclude:

(i) Wages or salaries;

(ii) Gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(ii) of this section. Determining monthly income from self-employment must be calculated in accordance with § 273.11(a)(2);

(iii) Benefits under Title I, II, IV, X, XIV or XVI of the SSA, including supplemental security income (SSI) benefits, TANF benefits, and foster care and adoption payments from a government source;.

(iv) Regular payments from a government source. Payments or allowances a household receives from an intermediary that are funded from a government source are considered payments from a government source;

(v) Worker's compensation;

(vi) Child support payments, support or alimony payments made to the household from a nonhousehold member;

(vii) Annuities, pensions, retirement benefits;

(viii) Disability benefits or old age or survivor benefits; and

(ix) Monies withdrawn or dividends received by a household from trust

funds considered to be excludable resources under § 273.8(e)(8).

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction*—(i) *48 States, District of Columbia, Alaska, Hawaii, and the Virgin Islands.* Effective October 1, 2002, in the 48 States and the District of Columbia, Alaska, Hawaii, and the Virgin Islands, the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income eligibility standard for each household size established under paragraph (a)(2) of this section rounded up to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(ii) *Guam.* Effective October 1, 2002, in Guam, the standard deduction for household sizes one through six shall be equal to 8.31 percent of double the monthly net income eligibility standard for each household size for the 48 States and the District of Columbia established under paragraph (a)(2) of this section rounded up to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(iii) *Minimum deduction levels.* Notwithstanding paragraphs (d)(1)(i) and (d)(1)(ii) of this section, the standard deduction in any year for each household in the 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands shall not be less than $134, $229, $189, $269, and $118, respectively.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction, except that the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion in paragraph (c)(17) of this section.

(3) *Excess medical deduction.* That portion of medical expenses in excess of $35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

(i) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.

(ii) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State.

(iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible;

(iv) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible;

(v) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients;

(vi) Dentures, hearing aids, and prosthetics;

(vii) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(viii) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(ix) Reasonable cost of transportation and lodging to obtain medical treatment or services;

(x) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The State agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the State agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the State agency shall treat the cost as a medical expense.

(4) *Dependent care.* Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(e), or attend training or pursue education which is preparatory to employment, except as provided in § 273.10(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is $200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent.

(5) *Optional child support deduction.* At its option, the State agency may provide a deduction, rather than the income exclusion provided under paragraph (c)(17) of this section, for legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction. A State agency that chooses to provide a child support deduction rather than an exclusion in accordance with this paragraph (d)(5) must specify in its State plan of operation that it has chosen to provide the deduction rather than the exclusion.

(6) *Shelter costs*—(i) *Homeless shelter deduction.* A State agency may provide a standard homeless shelter deduction of $143 a month to households in which all members are homeless individuals but are not receiving free shelter throughout the month. The deduction must be subtracted from net income in determining eligibility and allotments for the households. The State agency may make a household with extremely low shelter costs ineligible for the deduction. A household receiving the homeless shelter deduction cannot have its shelter expenses considered under paragraphs (d)(6)(ii) or (d)(6)(iii) of this section. However, a homeless household may choose to claim actual costs under paragraph (d)(6)(ii) of this section instead of the homeless shelter deduction if actual costs are higher and verified. A State agency that chooses to provide a homeless household shelter deduction must specify in its State plan of operation that it has selected this option.

(ii) *Excess shelter deduction.* Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area. For fiscal year 2001, effective March 1, 2001, the maximum monthly excess shelter expense deduction limits are $340 for the 48 contiguous States and the District of Columbia, $543 for Alaska, $458 for Hawaii, $399 for Guam, and $268 for the Virgin Islands. FNS will set the maximum monthly excess shelter expense deduction limits for fiscal year 2002 and future years by adjusting the previous year's limits to reflect changes in the shelter component and the fuels and utilities component of the Consumer Price Index for All Urban Consumers for the 12 month period ending the previous November 30. FNS will notify State agencies of the amount of the limit. Only the following expenses are allowable shelter expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (i.e., the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. Onetime deposits cannot be included.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(iii) *Standard utility allowances.* (A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. In States in which the cooling expense is minimal, the State agency may include the cooling expense in the electricity component. The State agency may vary the allowance by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards.

(B) The State agency must review the standards annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. State agencies must provide the amounts of standards to FNS when they are changed and submit methodologies used in developing and updating standards to FNS for approval when the methodologies are developed or changed.

(C) A standard with a heating or cooling component must be made available to households that incur heating or cooling expenses separately from their rent or mortgage and to households that receive direct or indirect assistance under the Low Income Home Energy Assistance Act of 1981 (LIHEAA). A heating or cooling standard is available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for

excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section. Households that receive direct or indirect energy assistance that is excluded from income consideration (other than that provided under the LIHEAA) are entitled to a standard that includes heating or cooling only if the amount of the expense exceeds the amount of the assistance. Households that receive direct or indirect energy assistance that is counted as income and incur a heating or cooling expense are entitled to use a standard that includes heating or cooling costs. A household that has both an occupied home and an unoccupied home is only entitled to one standard.

(D) At initial certification, recertification, and when a household moves, the household may choose between a standard or verified actual utility costs for any allowable expense identified in paragraph (d)(6)(ii)(C) of this section (except the telephone standard), unless the State agency has opted, with FNS approval, to mandate use of a standard. The State agency may require use of the telephone standard for the cost of basic telephone service even if actual costs are higher. Households certified for 24 months may also choose to switch between a standard and actual costs at the time of the mandatory interim contact required by § 273.10(f)(1)(i), if the State agency has not mandated use of the standard.

(E) A State agency may mandate use of standard utility allowances for all households with qualifying expenses if the State has developed one or more standards that include the costs of heating and cooling and one or more standards that do not include the costs of heating and cooling, the standards will not result in increased program costs, and FNS approves the standard. The prohibition on increasing Program costs does not apply to necessary increases to standards resulting from utility cost increases. If the State agency chooses to mandate use of standard utility allowances, it must provide a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency also must not prorate a standard utility allowance that includes heating or cooling costs provided to a household that lives and shares heating or cooling expenses with others. In determining whether the standard utility allowances increase program costs, the State agency shall not consider any increase in costs that results from providing a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency shall also not consider any increase in costs that results from providing a full (*i.e.*, not prorated) standard utility allowance that includes heating or cooling costs to a household that lives and shares heating or cooling expenses with others. Under this option households entitled to the standard may not claim actual expenses, even if the expenses are higher than the standard. Households not entitled to the standard may claim actual allowable expenses. Requests to use an LUA should include the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard, the average utility costs prior to use of the mandatory standard, the proposed standards, and an explanation of how the standards were computed.

(F) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency shall not prorate the standard for such households if the State agency mandates use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section. The State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.9, see the List of CFR Sections Affected, which appears in the

Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 273.10 Determining household eligibility and benefit levels.

(a) *Month of application*—(1) *Determination of eligibility and benefit levels.* (i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FNS, use a fiscal month if the State agency determines that it is more efficient and satisfies FNS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the Program. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with § 273.1(e)(2) will have their eligibility determined for the month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with § 273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. As used in this section, the term ''initial month'' means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term ''initial month'' means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation. Recertification shall be processed in accordance with § 273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FNS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

$$X = \frac{a \times b}{c}$$

$$\text{full month's benefits} \times \frac{(31 - \text{date of application})}{30} = \text{allotment}$$

(B) For State agencies which use the exact number of days in a month, the formula is:

$$X = \frac{a \times b}{c}$$

$$\text{full month's benefits} \times \frac{(\text{number of days in month} + 1 - \text{date of application})}{\text{number of days in month}} = \text{allotment}$$

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower whole dollar. If the computation results in an allotment of less than $10, then no issuance shall be made for the initial month.

(2) *Application for recertification.* Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2). If a household, other than a migrant or seasonal farmworker household, submits an application after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with paragraph (a)(1)(ii) of this section. If a household's failure to timely apply for recertification was due to an error of the State agency and therefore there was a break in participation, the State agency shall follow the procedures in § 273.14(e). In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(3) *Anticipated changes.* Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) *Changes in allotment levels.* As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(b) *Determining resources.* Available resources at the time the household is interviewed shall be used to determine the household's eligibility.

(c) *Determining income*—(1) *Anticipating income.* (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during

the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) *Income averaging.* (i) Income may be averaged in accordance with methods established by the State agency to

be applied Statewide for categories of households. When averaging income, the State agency shall use the household's anticipation of monthly income fluctuations over the certification period. An average must be recalculated at recertification and in response to changes in income, in accordance with § 273.12(c), and the State agency shall inform the household of the amount of income used to calculate the allotment. Conversion of income received weekly or biweekly in accordance with paragraph (c)(2) of this section does not constitute averaging.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions*. Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs as described in § 273.9.

(1) *Disallowed expenses*. (i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. In addition, an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. A dependent care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act (42 U.S.C. 681) or the Transitional Child Care (TCC) program shall not be deductible. A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an inkind benefit, such as food.

(2) *Billed expenses*. Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a 3-month supply of fuel oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin the month the change would become effective. For households certified for 24 months that have one-time medical expenses, the State agency must use the following procedure. In averaging any one-time medical expense incurred by a household during the first 12 months, the State agency must give the household the option of deducting the expense for one month, averaging the expense over the remainder of the first 12 months of the certification period, or averaging the expense over the remaining months in the certification period. One-time expenses reported after the 12th month of the certification period will be deducted in one month or averaged over the remaining months in the certification period, at the household's option.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period. At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8) shall be obtained prior to the household's recertification. If a child in the household reaches his or her second birthday during the certification period, the $200 maximum dependent care deduction defined in § 273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

(5) *Conversion of deductions.* The income conversion procedures in paragraph (c)(2) of this section shall also apply to expenses billed on a weekly or biweekly basis.

(6) *Energy Assistance Payments.* Except for payments made under the Low

Income Energy Assistance Act of 1981, the State agency shall prorate energy assistance payments as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

(8) *Optional child support deduction.* If the State agency opts to provide households with an income deduction rather than an income exclusion for legally obligated child support payments in accordance with § 273.9(d)(5), the State agency may budget such payments in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) *Calculating net income and benefit levels*—(1) *Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self-employment income of a farmer shall be offset in accordance with § 273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions. If the State agency has chosen to treat legally obligated child support payments as an income exclusion in accordance with § 273.9(c)(17), multiply the excluded earnings used to pay child support by 20 percent and subtract that amount from the total gross monthly income.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in § 273.9(d)(3), determine if total medical expenses exceed $35. If so, subtract that portion which exceeds $35.

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount as specified under § 273.9(d)(4) for each dependent.

(F) If the State agency has chosen to treat legally obligated child support payments as a deduction rather than an exclusion in accordance with § 273.9(d)(5), subtract allowable monthly child support payments in accordance with § 273.9(d)(5).

(G) Subtract the homeless shelter deduction, if any, up to the maximum of $143.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

(I) Subtract the excess shelter cost up to the maximum amount allowed

for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the State agency shall use one of the following two procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or

(B) Apply the rounding procedure that is currently in effect for the State's Temporary Assistance for Needy Families (TANF) program. If the State TANF program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

(2) *Eligibility and benefits.* (i)(A) Households which contain an elderly or disabled member as defined in § 271.2, shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) In addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in § 273.9(a)(1) for the appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, the gross and/or net income to the corresponding income eligibility standard in accordance with § 273.9(a)(1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 18 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 18 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 18.

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(*1*) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(*2*) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than $10 for the household, no benefits shall

be issued to the household for the initial month.

(C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit and all eligible households with three or more members which are entitled to $1, $3, and $5 allotments shall receive allotments, of $2, $4, and $6, respectively, to correspond with current coupon book determinations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) and the provision precluding issuances of less than $10 in an initial month of paragraph (e)(2)(ii)(B)) of this section:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(*1*) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(*2*) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(*3*) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(*4*) The household shall retain the right to submit a new application while it is suspended.

(*5*) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(*6*) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a change, in accordance with paragraph (a)(1) of this section.

(*7*) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) or (e)(2)(ii)(B) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible housholds shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the maximum food stamp allotment amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the maximum food stamp allotment amounts by the percentage specified in the FNS notice; if the result ends in 1 through 99 cents, round the result up to the nearest higher dollar; and subtract the result from the normal maximum food stamp allotment amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in paragraph (e)(2)(ii) of this section and substitute the reduced maximum food stamp allotment amounts for the normal maximum food stamp allotment amounts.

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for

households with one or two members only may be disregarded and all households may have their benefits lowered by reducing maximum food stamp allotment amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FNS.

(3) *Destitute households.* Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) If income is received on a monthly or more frequent basis, it shall be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than $25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than $25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than $25 from the new source will not be received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(vii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than $25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a table posted on the FNS web site, at *www.fns.usda.gov/fsp*.

(ii) *Adjustment*. Effective October 1, 1996, the maximum food stamp allotments must be based on 100% of the cost of the TFP as defined in § 271.2 of this chapter for the preceding June, rounded to the nearest lower dollar increment, except that on October 1, 1996, the allotments may not fall below those in effect on September 30, 1996.

(f) *Certification periods*. The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on

the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months except to accommodate a household's transitional benefit period and as specified in paragraphs (f)(1) and (f)(2) of this section.

(1) *Households in which all adult members are elderly or disabled*. The State agency may certify for up to 24 months households in which all adult members are elderly or disabled. The State agency must have at least one contact with each household every 12 months. The State agency may use any method it chooses for this contact.

(2) *Households residing on a reservation*. The State agency must certify for 24 months those households residing on a reservation which it requires to submit monthly reports in accordance with § 273.21, unless the State agency obtains a waiver from FNS. In the waiver request the State agency must include justification for a shorter period and input from the affected Indian tribal organization(s). When households move off the reservation, the State agency must either continue their certification periods until they would normally expire or shorten the certification periods in accordance with paragraph (f)(4) of this section.

(3) *Certification period length*. The State agency should assign each household the longest certification period possible, consistent with its circumstances.

(i) Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.

(ii) Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned certification periods consistent with their circumstances, but generally no less than 3 months.

(iii) Households may be assigned 1- or 2-month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.

(4) *Shortening certification periods*. The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, the household has not complied with the requirements of § 273.12(c)(3), or the State agency must shorten the household's certification period to comply with the requirements of § 273.12(a)(5). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency must issue a notice of adverse action as provided in § 273.13 to shorten a participating household's certification period in connection with imposing the simplified reporting requirement. The State agency may not use the Notice of Expiration to shorten a certification period, except that the State agency must use the Notice of Expiration to shorten a household's certification period when the household is receiving transitional benefits under Subpart H, has not reached the maximum allowable number of months in its certification period during the transitional period, and the State agency has chosen to recertify the household in accordance with § 273.28(b). If the transition period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

(5) *Lengthening certification periods*. State agencies may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the State agency extends a household's certification period, it

must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in paragraph (g)(1)(i)(A) of this section.

(g) *Certification notices to households*—(1) *Initial applications*. State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility*. (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(C) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial*. If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. A household which is potentially categorically eligible but whose food stamp application is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a State or local GA program. In cases where the State agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) *Notice of pending status*. If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h) (2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) *Applications for recertification*. The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period if the household has complied with all recertification requirements. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.10, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income*. The State agency must calculate a household's self-employment income as follows:

(1) *Averaging self-employment income*. (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.

(ii) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(iii) Notwithstanding the provisions of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, households subject to monthly reporting and retrospective budgeting who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

(2) *Determining monthly income from self-employment*. (i) For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the self-employment income (as determined in paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. The monthly net self-employment income must be added to any other earned income received by the household to determine total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer (defined for the purposes of this paragraph (a)(2)(ii) as a self-employed

farmer who receives or anticipates receiving annual gross proceeds of $1,000 or more from the farming enterprise), such losses must be prorated in accordance with paragraph (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income.

(B) Offset any remaining farm self-employment losses against the total amount of earned and unearned income *after* the earned income deduction has been applied.

(iii) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment must be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency must count the full amount of the capital gain as income for food stamp purposes. For households whose self-employment income is calculated on an anticipated (rather than averaged) basis in accordance with paragraph (a)(1) of this section, the State agency must count the amount of capital gains the household anticipates receiving during the months over which the income is being averaged.

(b) *Allowable costs of producing self-employment income.* (1) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

(2) In determining net self-employment income, the following items are not allowable costs of doing business:

(i) Net losses from previous periods;

(ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in § 273.9(d)(2);

(iii) Depreciation; and

(iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

(3) When calculating the costs of producing self-employment income, State agencies may elect to use actual costs for allowable expenses in accordance with paragraphs (b)(1) and (b)(2) of this section or determine self-employment expenses as follows:

(i) For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program or a standard amount based on estimated per-meal costs.

(ii) For income from boarders, other than those in commercial boarding houses or from foster care boarders, use:

(A) The maximum food stamp allotment for a household size that is equal to the number of boarders; or

(B) A flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual.

(iii) For income from foster care boarders, refer to § 273.1(c)(6).

(iv) Use the standard amount the State uses for its TANF program.

(v) Use an amount approved by FNS. State agencies may submit a proposal to FNS for approval to use a simplified self-employment expense calculation method that does not result in increased Program costs. Different methods may be proposed for different types of self-employment. The proposal must include a description of the proposed

method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase Program costs.

(c) *Treatment of income and resources of certain nonhousehold members*. During the period of time that a household member cannot participate for the reasons addressed in this section, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Intentional Program violation, felony drug conviction, or fleeing felon disqualifications, and workfare or work requirement sanctions*. The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of a disqualification for an intentional Program violation, a felony drug conviction, their fleeing felon status, noncompliance with a work requirement of § 273.7, or imposition of a sanction while they were participating in a household disqualified because of failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses*. The income and resources of the ineligible household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level*. The ineligible member shall not be included when determining the household's size for the purposes of:

(A) Assigning a benefit level to the household;

(B) Assigning a standard deduction to the household;

(C) Comparing the household's monthly income with the income eligibility standards; or

(D) Comparing the household's resources with the resource eligibility limits. The State agency shall ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

(2) *SSN disqualifications, comparable disqualifications, child support disqualifications, and ineligible ABAWDs*. The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for refusal to obtain or provide an SSN, for meeting the time limit for able-bodied adults without dependents or for being disqualified under paragraphs (k), (o), (p), or (q) of this section shall be determined as follows:

(i) *Resources*. The resources of such ineligible members shall continue to count in their entirety to the remaining household members.

(ii) *Income*. A pro rata share of the income of such ineligible members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible members' share is counted as income for the remaining household members.

(iii) *Deductible expenses*. The 20 percent earned income deduction shall apply to the prorated income earned by such ineligible members which is attributed to their households. That portion of the households' allowable child support payment, shelter and dependent care expenses which are either paid by or billed to the ineligible members shall be divided evenly among the households' members including the ineligible members. All but the ineligible members' share is counted as a deductible child support payment, shelter or dependent care expense for the remaining household members.

(iv) *Eligibility and benefit level*. Such ineligible members shall not be included when determining their households' sizes for the purposes of:

(A) Assigning a benefit level to the household;

(B) Assigning a standard deduction to the household;

(C) Comparing the household's monthly income with the income eligibility standards; or

(D) Comparing the household's resources with the resource eligibility limits.

(3) *Ineligible alien*. The State agency must determine the eligibility and benefit level of any remaining household members of a household containing an ineligible alien as follows:

(i) The State agency must count all or, at the discretion of the State agency, all but a pro rata share, of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(i), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata share to apply the net income test and determine level of benefits. This paragraph (c)(3)(i) does not apply to an alien:

(A) Who is lawfully admitted for permanent residence under the INA;

(B) Who is granted asylum under section 208 of the INA;

(C) Who is admitted as a refugee under section 207 of the INA;

(D) Who is paroled in accordance with section 212(d)(5) of the INA;

(E) Whose deportation or removal has been withheld in accordance with section 243 of the INA;

(F) Who is aged, blind, or disabled in accordance with section 1614(a)(1) of the Social Security Act and is admitted for temporary or permanent residence under section 245A(b)(1) of the INA; or

(G) Who is a special agricultural worker admitted for temporary residence under section 210(a) of the INA.

(ii) For an ineligible alien within a category described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section, State agencies may either:

(A) Count all of the ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses; or

(B) Count all of the ineligible alien's resources, count none of the ineligible alien's income and deductible expenses, count any money payment (including payments in currency, by check, or electronic transfer) made by the ineligible alien to at least one eligible household member, not deduct as a household expense any otherwise deductible expenses paid by the ineligible alien, but cap the resulting benefit amount for the eligible members at the allotment amount the household would receive if the household member within the one of the categories described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section were still an eligible alien. The State agency must elect one State-wide option for determining the eligibility and benefit level of households with members who are aliens within the categories described paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section.

(iii) For an alien who is ineligible under § 273.4(a) because the alien's household indicates inability or unwillingness to provide documentation of the alien's immigration status, the State agency must count all or, at the discretion of the State agency, all but a pro rata share of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(iii), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata to apply the net income test and determine level of benefits.

(iv) The State agency must compute the income of the ineligible aliens using the income definition in § 273.9(b) and the income exclusions in § 273.9(c).

(v) For purposes of this paragraph (c)(3), the State agency must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

(4) *Reduction or termination of benefits within the certification period*. Whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Excluded for intentional Program violation disqualification*. If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for

intentional Program violation, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing. However, a participating household is entitled to a notice of adverse action prior to any action to reduce, suspend or terminate its benefits, if a State agency determines that it contains an individual who was disqualified in another State and is still within the period of disqualification.

(ii) *Disqualified or determined ineligible for reasons other than intentional Program violation*. If a household's benefits are reduced or terminated within the certification period for reasons other than an Intentional Program Violation disqualification, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

(d) *Treatment of income and resources of other nonhousehold members*. (1) For all other nonhousehold members defined in § 273.1 (b)(1) and (b)(2) who are not specifically mentioned in paragraph (c) of this section, the income and resources of such individuals shall not be considered available to the household with whom the individual resides. Cash payments from the nonhousehold member to the household will be considered income under the normal income standards set in § 273.9(b). Vendor payments, as defined in § 273.9(c)(1), shall be excluded as income. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

(2) When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

(i) If the household's share can be identified, the State agency shall count that portion due to the household as earned income.

(ii) If the household's share cannot be identified the State agency shall prorate the earned income among all those whom it was intended to cover and count that prorated portion to the household.

(3) Such nonhousehold members shall not be included when determining the size of the household for the purposes of:

(i) Assigning a benefit level to the household;

(ii) Comparing the household's monthly income with the income eligibility standards; or

(iii) Comparing the household's resources with the resource eligibility limits.

(e) *Residents of drug and alcohol treatment and rehabilitation programs*. (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic (DAA) treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Applications must be made through an authorized representative who is employed by the DAA center and designated by the center for that purpose. The State agency may require the household to designate the DAA center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

(2)(i) Prior to certifying any residents for food stamps, the State agency must verify that the DAA center is authorized by FNS as a retailer in accordance with § 278.1(e) of this chapter or

that it comes under part B of title XIX of the Public Health Service Act, 42 U.S.C. 300x et seq., (as defined in ''Drug addiction or alcoholic treatment and rehabilitation program'' in § 271.2 of this chapter).

(ii) Except as otherwise provided in this paragraph (e)(2), the State agency must certify residents of DAA centers by using the same provisions that apply to all other households, including, but not limited to, the same rights to notices of adverse action and fair hearings.

(iii) DAA centers in areas without EBT systems may redeem the households' paper coupons through authorized food stores. DAA centers in areas with EBT systems may redeem benefits in various ways depending on the State's EBT system design. The designs may include DAA use of individual household EBT cards at authorized stores, authorization of DAA centers as retailers with EBT access via POS at the center, DAA use of a center EBT card that is an aggregate of individual household benefits, and other designs. Guidelines for approval of EBT systems are contained in § 274.12 of this chapter.

(iv) The treatment center must notify the State agency of changes in the household's circumstances as provided in § 273.12(a).

(3) The DAA center must provide the State agency a list of currently participating residents that includes a statement signed by a responsible center official attesting to the validity of the list. The State agency must require submission of the list on either a monthly or semimonthly basis. In addition, the State agency must conduct periodic random on-site visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(4) The State agency may issue allotments on a semimonthly basis to households in DAA centers.

(5) When a household leaves the center, the center must notify the State agency and the center must provide the household with its ID card. If possible, the center must provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and must advise the household to return the form to the appropriate office of the State agency within 10 days. After the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(i) The center must provide the household with its EBT card if it was in the possession of the center, any untransacted ATP, or the household's full allotment if already issued and if no coupons have been spent on behalf of that individual household. If the household has already left the center, the center must return them to the State agency. These procedures are applicable at any time during the month.

(ii) If the coupons have already been issued and any portion spent on behalf of the household, the following procedures must be followed.

(A) If the household leaves prior to the 16th of the month and benefits are not issued under an EBT system, the center must provide the household with one-half of its monthly coupon allotment unless the State agency issues semi-monthly allotments and the second half has not been turned over to the center. If benefits are issued under an EBT system, the State must ensure that the EBT design or procedures for DAAs prohibit the DAA from obtaining more than one-half of the household's allotment prior to the 16th of the month or permit the return of one-half of the allotment to the household's EBT account through a refund, transfer, or other means if the household leaves prior to the 16th of the month.

(B) If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the center to give the household a portion of its allotment. Under an EBT system where the center has an aggregate EBT card, the State agency may, but is not required to transfer a portion of the household's monthly allotment from a center's EBT account back to the household's EBT account. However, the household, not the center, must be allowed to receive any remaining benefits authorized by the household's HIR or ATP or posted to the EBT account

at the time the household leaves the center.

(iii) The center must return to the State agency any EBT card or coupons not provided to departing residents by the end of each month. These coupons include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the household with the coupons or the household left on or after the 16th of the month and the coupons were not returned to the household.

(6) The organization or institution shall be responsible for any misrepresentation or intentional Program violation which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution authorized by FNS as a retail food store may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FNS when it has reason to believe that an organization or institution is misusing coupons in its possession. However, the State agency shall take no action prior to FNS action against the organization or institution. The State agency shall establish a claim for overissuances of food coupons held on behalf of resident clients as stipulated in paragraph (e)(6) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. If FNS disqualifies an organization or institution as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

(f) *Residents of a group living arrangement.* (1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2 of this chapter) may apply either through use of an authorized representative employed and designated by the group living arrangement or on their own behalf or through an authorized representative of their choice. The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Some residents of the GLA may apply on their own behalf while other residents of the same GLA may apply through the GLA's representative. Prior to certifying any residents, the State agency must verify that the GLA is authorized by FNS or is certified by the appropriate agency of the State (as defined in § 271.2 of this chapter) including the agency's determination that the center is a nonprofit organization.

(i) If the residents apply on their own behalf, the household size must be in accordance with the definition in § 273.1. The State agency must certify these residents using the same provisions that apply to all other households. If FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf will still be able to participate if otherwise eligible.

(ii) If the residents apply through the use of the GLA's authorized representative, their eligibility must be determined as a one-person household.

(2) Each group living arrangement shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The same provisions applicable in § 273.11(e)(3) to residents of treatment centers also apply to blind or disabled residents of group living arrangements

when the facility acts as the resident's authorized representative.

(4) If the resident has made application on his/her own behalf, the household is responsible for reporting changes to the State agency as provided in § 273.12(a). If the group living arrangement is acting in the capacity of an authorized representative, the group living arrangement shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and when the individual leaves the group living arrangement. The group living arrangement shall return any household's ATP card or coupons to the State agency if they are received after the household has left the group living arrangement.

(5)(i) When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the coupons on behalf of the residents (regardless of the method of application), shall provide residents with their ID cards (if applicable) and any untransacted ATP cards. The household, not the group living arrangement, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. Also, the departing household shall receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the group living arrangement prior to the 16th day of the month, the facility shall provide the household with its ID card (if applicable) and one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents shall be given a pro rata share of one-half of the coupon allotment if leaving prior to the 16th day of the month and shall be instructed to obtain ID cards or written authorizations to use the coupons from the local office.

(ii) Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. The group living arrangement, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The group living arrangement shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with the coupons.

(6) The same provisions applicable to drug and alcoholic treatment center in paragraphs (e) (6) and (7) of this section also apply to group living arrangements when acting as an authorized representative. These provisions, however, are not applicable if a resident has applied on his/her own behalf. The resident applying on his/her own behalf shall be responsible for overissuances as would any other household as discussed in § 273.18.

(7) If the residents are certified on their own behalf, the food stamp benefits may either be returned to the GLA to be used to purchase meals served either communally or individually to eligible residents or retained and used to purchase and prepare food for their own consumption. The GLA may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the GLA's service or if meals are prepared at a central location for delivery to the individual residents. If personalized meals are prepared and paid for with food stamps, the GLA must ensure that the resident's food stamp benefits are used for meals intended for that resident.

(g) *Shelters for battered women and children.* (1) Prior to certifying its residents under this paragraph, the State

agency shall determine that the shelter for battered women and children meets the definition in § 271.2 and document the basis of this determination. Shelters having FNS authorization to redeem at wholesalers shall be considered as meeting the definition and the State agency is not required to make any further determination. The State agency may choose to require local project area offices to maintain a list of shelters meeting the definition to facilitate prompt certification of eligible residents following the special procedures outlined below.

(2) Many shelter residents have recently left a household containing the person who has abused them. Their former household may be certified for participation in the Program, and its certification may be based on a household size that includes the women and children who have just left. Shelter residents who are included in such certified households may nevertheless apply for and (if otherwise eligible) participate in the Program as separate households if such certified household which includes them is the household containing the person who subjected them to abuse. Shelter residents who are included in such certified households may receive an additional allotment as a separate household only once a month.

(3) Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible in accordance with § 273.8. Room payments to the shelter shall be considered as shelter expenses.

(4) Any shelter residents eligible for expedited service shall be handled in accordance with § 273.2(i).

(5) State agencies must take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action must include acting on the reported change in accordance with § 273.12 or § 273.21, as appropriate, by issuing a notice of adverse action in accordance with § 273.13.

(h) *Homeless food stamp households.* Homeless food stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from homeless meal providers authorized by FNS under § 278.1(h).

(i) *Prerelease applicants.* A household which consists of a resident or residents of a public institution(s) which applies for SSI under SSA's Prerelease Program for the Institutionalized shall be allowed to apply for food stamp benefits jointly with their application for SSI prior to their release from the institution. Such households shall be certified in accordance with the provisions of § 273.1(e), § 273.2(c), (g), (i), (j) and (k), and § 273.10(a), as appropriate.

(j) *Reduction of public assistance benefits.* If the benefits of a household that is receiving public assistance are reduced under a Federal, State, or local means-tested public assistance program because of the failure of a food stamp household member to perform an action required under the assistance program or for fraud, the State agency shall not increase the household's food stamp allotment as the result of the decrease in income. In addition to prohibiting an increase in food stamp benefits, the State agency may impose a penalty on the household that represents a percentage of the food stamp allotment that does not exceed 25 percent. The 25 percent reduction in food stamp benefits must be based on the amount of food stamp benefits the household should have received under the regular food stamp benefit formula, taking into account its actual (reduced) income. However, under no circumstances can the food stamp benefits be allowed to rise. Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, failing to reapply or complete the application process for continued assistance under the other program, failing to perform an action that the individual is unable to perform as opposed to refusing to perform, or failing to comply with a purely procedural requirement, shall not be considered a failure to perform an action required by an assistance program for purposes of this provision. A procedural requirement, which would not trigger a food

stamp sanction, is a step that an individual must take to continue receiving benefits in the assistance program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a food stamp sanction, is a behavioral requirement in the assistance program designed to improve the well being of the recipient family, such as participating in job search activities. The State agency shall not apply this provision to individuals who fail to perform a required action at the time the individual initially applies for assistance. The State agency shall not increase food stamp benefits, and may reduce food stamp benefits only if the person is receiving such assistance at the time the reduction in assistance is imposed or the reduction in assistance is imposed at the time of application for continued assistance benefits if there is no break in participation. The individual must be certified for food stamps at the time of the failure to perform a required action for this provision to apply. Assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.

(1) For purposes of this provision a Federal, State or local ''means-tested public assistance program'' shall mean public or general assistance as defined in § 271.2 of this chapter, and is referred to as ''assistance''. This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information. The State agency, rather than the household, shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(2) The prohibition on increasing food stamp benefits applies for the duration of the reduction in the assistance program. If at any time the State agency can no longer ascertain the amount of the reduction, then the State agency may terminate the food stamp sanction. However, the sanction may not exceed the sanction in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, it would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time. It shall be concurrent with the reduction in the other assistance program to the extent allowed by normal food stamp change processing and notice procedures.

(3) The State agency shall determine how to prevent an increase in food stamp benefits. Among other options, the State agency may increase the assistance grant by a flat percent, not to exceed 25 percent, for all households that fail to perform a required action in lieu of computing an individual amount or percentage for each affected household.

(4) If the allotment of a household is reduced under Title IV-A of the Social Security Act, the State agency may use the same procedures that apply under Title IV-A to prevent an increase in food stamp benefits as the result of the decrease in Title IV-A benefits. For example, the same budgeting procedures and combined notices and hearings may be used, but the food stamp allotment may not be reduced by more than 25 percent.

(5) The State agency must lift the ban on increasing food stamp benefits if it becomes aware that the person has become ineligible for the assistance program during the disqualification period for some other reason, or the person's assistance case is closed.

(6) If an individual moves within the State, the prohibition on increasing food stamp benefits shall be applied to the gaining household unless that person is ineligible for the assistance program for some other reason. If such individual moves to a new State the prohibition on increasing benefits shall not be applied.

(7) The State agency must restore lost benefits when necessary in accordance with § 273.17 if it is later determined that the reduction in the public assistance grant was not appropriate.

(8) The State agency must act on changes which are not related to the assistance violation and that would affect the household's benefits.

(9) The State agency must include in its State Plan of Operations any options it has selected in this paragraph (j).

(k) *Comparable disqualifications.* If a disqualification is imposed on a member of a household for failure to perform an action required under a Federal, State or local means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the Food Stamp Program. The program must be authorized by a Federal, State, or local law, but the provision itself does not have to be specified in the law. A State agency may choose to apply this provision to one or more of these programs, and it may select the types of disqualifications within a program that it wants to impose on food stamp recipients. The State agency shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(1) For purposes of this section Federal, State or local ''means-tested public assistance program'' shall mean public and general assistance as defined in § 271.2 of this chapter.

(2) The State agency shall not apply this provision to individuals who are disqualified at the time the individual initially applies for assistance benefits. It may apply the provision if the person was receiving such assistance at the time the disqualification in the assistance program was imposed and to disqualifications imposed at the time of application for continued assistance benefits if there is no break in participation with the following exceptions: Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, failing to reapply or complete the application process for continued assistance, failing to perform an action that the individual is unable to perform as opposed to refusing to perform, and failing to perform purely procedural requirements, shall not be considered failures to perform an action required by an assistance program. A procedural requirement, which would not trigger a food stamp sanction, is a step that an individual must take to continue receiving benefits in the assistance program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a food stamp sanction, is a behavioral requirement in the assistance program designed to improve the well being of the recipient family, such as participating in job search activities. The individual must be receiving food stamps at the time of the disqualification in the assistance program to be disqualified from the Food Stamp Program under this provision.

(3) The State agency must stop the food stamp disqualification when it becomes aware that the person has become ineligible for assistance for some other reason, or the assistance case is closed.

(4) If a disqualification is imposed for a failure of an individual to perform an action required under a program under Title IV-A of the Social Security Act, the State may use the rules and procedures that apply under the Title IV-A program to impose the same disqualification under the Food Stamp Program.

(5) Only the individual who committed the violation in the assistance program may be disqualified for food stamp purposes even if the entire assistance unit is disqualified for Title IV-A purposes.

(6) A comparable disqualification for food stamp purposes shall be imposed concurrently with the disqualification in the assistance program to the extent allowed by normal food stamp processing times and notice requirements. The State agency may determine the length of the disqualification, providing that the disqualification does not exceed the disqualification in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance,

if would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time.

(7) If there is a pending disqualification for a food stamp violation and a pending comparable disqualification, they shall be imposed concurrently to the extent appropriate. For example, if the household is disqualified for June for a food stamp violation and an individual is disqualified for June and July for an assistance program violation, the whole household shall be disqualified for June and the individual shall be disqualified for July for food stamp purposes.

(8) The State agency must treat the income and resources of the disqualified individual in accordance with § 273.11(c)(2).

(9) After a disqualification period has expired, the person may apply for food stamp benefits and shall be treated as a new applicant or a new household member, except that a current disqualification based on a food stamp work requirement shall be considered in determining eligibility.

(10) A comparable food stamp disqualification may be imposed in addition to any coupon allotment reductions made in accordance with paragraph (j) of this section.

(11) State agencies shall state in their Plan of Operation if they have elected to apply comparable disqualifications, identify which sanctions in the other programs this provision applies to, and indicate the options and procedures allowed in paragraphs (k)(1), (k)(2), (k)(3), (k)(4), and (k)(10) of this section which they have selected.

(12) The State agency must act on changes which are not related to the assistance violation and that would affect the household's benefits.

(13) The State agency must restore lost benefits when necessary in accordance with 7 CFR 273.17 if it is later determined that the reduction in the public assistance grant was not appropriate.

(l) *School Attendance.* Section 404(i) of Part A of the Social Security Act, 42 U.S.C. 601, et seq., provides that any state receiving a TANF block grant cannot be prohibited from sanctioning a family that includes an adult who has received assistance financed with federal TANF dollars or provided from the food stamp program if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside. Section 404(j) of Part A of the Social Security Act, 42 U.S.C. 601, et seq., provides that States shall not be prohibited from sanctioning a family that includes an adult who is older than 20 and younger than 51 and who has received assistance that is either financed with federal TANF funds or provided through the food stamp program if such adult does not have, or is not working toward attaining, a secondary school diploma or recognized equivalent. These provisions do not provide independent authority for food stamp sanctions beyond any that may apply through paragraphs (j) and (k) of this section.

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c)(1) of this section.

(n) *Fleeing felons and probation or parole violators.* Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a

crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members. The income and resources of the ineligible member shall be handled in accordance with (c)(1) of this section.

(o) *Custodial parent's cooperation with the State Child Support Agency.* For purposes of this provision, a custodial parent is a natural or adoptive parent who lives with his or her child, or other individual who is living with and exercises parental control over a child under the age of 18.

(1) *Option to disqualify custodial parent for failure to cooperate.* At the option of a State agency, subject to paragraphs (o)(2) and (o)(4) of this section, no natural or adoptive parent or, at State agency option, other individual (collectively referred to in this paragraph (o) as ''the individual'') who is living with and exercising parental control over a child under the age of 18 who has an absent parent shall be eligible to participate in the Food Stamp Program unless the individual cooperates with the agency administering a State Child Support Enforcement Program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, et seq.), hereafter referred to as the State Child Support Agency.

(i) If the State agency chooses to implement paragraph (o)(1) of this section, it must notify all individuals of this requirement in writing at the time of application and reapplication for continued benefits.

(ii) If the State agency chooses to implement paragraph (o)(1) of this section, it must refer all appropriate individuals to the State Child Support Agency.

(iii) If the individual is receiving TANF or Medicaid, or assistance from the State Child Support Agency, and has already been determined to be cooperating, or has been determined to have good cause for not cooperating, then the State agency shall consider the individual to be cooperating for food stamp purposes.

(iv) The individual must cooperate with the State Child Support Agency in establishing paternity of the child, and in establishing, modifying, or enforcing a support order with respect to the child and the individual in accordance with section 454(29) of the Social Security Act (42 U.S.C. 654(29)).

(v) Pursuant to Section 454(29)(E) of the Social Security Act (42 U.S.C. 654(29)(E) the State Child Support Agency will notify the individual and the State agency whether or not it has determined that the individual is cooperating in good faith.

(2) *Claiming good cause for non-cooperation.* Prior to requiring cooperation under paragraph (o)(1) of this section, the State agency will notify the household in writing at initial application and at application for continued benefits of the right to good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency:

(i) *Circumstances under which cooperation may be ''against the best interests of the child.''* The individual's failure to cooperate is deemed to be for ''good cause'' if:

(A) The individual meets the good cause criteria established under the State program funded under Part A of Title IV or Part D of Title IV of the Social Security Act (42 U.S.C. 601, et seq, or 42 U.S.C. 651, et seq.) (whichever agency is authorized to define and determine good cause) for failing to cooperate with the State Child Support Agency; or

(B) Cooperating with the State Child Support Agency would make it more difficult for the individual to escape domestic violence or unfairly penalize the individual who is or has been victimized by such violence, or the individual who is at risk of further domestic violence. For purposes of this provision, the term ''domestic violence'' means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in

nonconsensual sexual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

(C) The individual meets any other good cause criteria identified by the State agency. These criteria will be defined in consultation with the Child Support Agency or TANF program, whichever is appropriate, and identified in the State plan according to § 272.2(d) (xiii).

(ii) *Proof of good cause claim.* (A) The State agency will accept as corroborative evidence the same evidence required by Part A of Title IV or Part D of Title IV of the Social Security Act (42 U.S.C. 601, et seq. or 42 U.S.C. 651, et seq.) to corroborate a claim of good cause.

(B) The State agency will make a good cause determination based on the corroborative evidence supplied by the individual only after it has examined the evidence and found that it actually verifies the good cause claim.

(iii) *Review by the State Child Support or TANF Agency.* Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendation from the State Child Support or TANF Agency.

(iv) *Delayed finding of good cause.* The State agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish corroborative evidence and information. In such cases, the State agency must abide by the normal processing standards according to § 273.2(g).

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual has not cooperated without good cause, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled in accordance with paragraph (c)(2) of this section.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, et seq.)

(5) *Terminating the disqualification.* The period of disqualification ends once it has been determined that the individual is cooperating with the State Child Support Agency. The State agency must have procedures in place for re-qualifying such an individual.

(p) *Non-custodial parent's cooperation with child support agencies.* For purposes of this provision, a ''non-custodial parent'' is a putative or identified parent who does not live with his or her child who is under the age of 18.

(1) *Option to disqualify non-custodial parent for refusal to cooperate.* At the option of a State agency, subject to paragraphs (p)(2) and (p)(4) of this section, a putative or identified non-custodial parent of a child under the age of 18 (referred to in this subsection as ''the individual'') shall not be eligible to participate in the Food Stamp Program if the individual refuses to cooperate with the State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, et seq.), hereafter referred to as the State Child Support Agency, in establishing the paternity of the child (if the child is born out of wedlock); and in providing support for the child.

(i) If the State agency chooses to implement paragraph (p)(1) of this section, it must notify all individuals in writing of this requirement at the time of application and reapplication for continued benefits.

(ii) If the individual is receiving TANF, Medicaid, or assistance from the State Child Support Agency, and has already been determined to be cooperating, or has been determined to have good cause for not cooperating, then the State agency shall consider the individual is cooperating for food stamp purposes.

(iii) If the State agency chooses to implement paragraph (p)(1) of this section, it must refer all appropriate individuals to the State Child Support

Agency established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, et seq.).

(iv) The individual must cooperate with the State Child Support Agency in establishing the paternity of the child (if the child is born out of wedlock), and in providing support for the child.

(v) Pursuant to Section 454(29)(E) of the Social Security Act (42 U.S.C. 654(29)(E)), the State Child Support Agency will notify the individual and the State agency whether or not it has determined that the individual is cooperating in good faith.

(2) *Determining refusal to cooperate.* If the State Child Support Agency determines that the individual is not cooperating in good faith, then the State agency will determine whether the non-cooperation constitutes a refusal to cooperate. Refusal to cooperate is when an individual has demonstrated an unwillingness to cooperate as opposed to an inability to cooperate.

(3) *Individual disqualification.* If the State agency determines that the non-custodial parent has refused to cooperate, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled according to paragraph (c)(2) of this section.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, et seq.)

(5) *Privacy.* The State agency shall provide safeguards to restrict the use of information collected by a State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, et seq.) to purposes for which the information is collected.

(6) *Termination of disqualification.* The period of disqualification ends once it has been determined that the individual is cooperating with the child support agency. The State agency must have procedures in place for re-qualifying such an individual.

(q) *Disqualification for child support arrears*—(1) *Option to disqualify.* At the option of a State agency, no individual shall be eligible to participate in the Food Stamp Program as a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of a child of the individual. The State agency may opt to apply this provision to only non-custodial parents.

(2) *Exceptions.* A disqualification under paragraph (q)(1) of this section shall not apply if:

(i) A court is allowing the individual to delay payment;

(ii) The individual is complying with a payment plan approved by a court or the State agency designated under Part D of Title IV of the Social Security Act (42 U.S.C., 651 et seq.) to provide support of a child of the individual; or

(iii) The State agency determines the individual has good cause for non-support.

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual should be disqualified for child support arrears, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled according to paragraph (c)(2) of this section.

(4) *Collecting claims.* State agencies shall initiate collection action as provided for in § 273.18 for any month a household member is disqualified for child support arrears by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim and how the household may pay the claim. The household should also be informed as to the adjusted amount of income, resources, and deductible expenses of the remaining members of the household for the month(s) a member is disqualified for child support arrears.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

Subpart E—Continuing Participation

§ 273.12 Requirements for change reporting households.

(a) *Household responsibility to report.* (1) Monthly reporting households are required to report as provided in § 273.21. Quarterly reporting households are subject to the procedures as provided in paragraph (a)(4) of this section. Simplified reporting households are subject to the procedures as provided in paragraph (a)(5) of this section. Certified change reporting households are required to report the following changes in circumstances:

(i) (A) A change of more than $50 in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) in project areas in which GA and food stamp cases are jointly processed. The State agency is responsible for identifying changes during the certification period in the amount of PA, or GA in jointly processed cases. If GA and food stamp cases are not jointly processed, the household is responsible for reporting changes in GA of more than $50.

(B) A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income.

(C) One of the following, as determined by the State agency (different options may be used for different categories of households as long as no household is required to report under more than one option; the State may also utilize different options in different project areas within the State):

(*1*) A change in the wage rate or salary or a change in full-time or part-time employment status (as determined by the employer or as defined in the State's PA program), provided that the household is certified for no more than 6 months; or

(*2*) A change in the amount earned of more than $100 a month from the amount last used to calculate the household's allotment, provided that the household is certified for no more than 6 months.

(ii) All changes in household composition, such as the addition or loss of a household member;

(iii) Changes in residence and the resulting change in shelter costs;

(iv) The acquisition of a licensed vehicle not fully excludable under § 273.8(e); and

(v) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of $2,000.

(vi) Changes in the legal obligation to pay child support. However, the State agency may remove this reporting requirement if it has chosen to use information provided by the State's CSE agency in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid in accordance with § 273.2(f)(1)(xii).

(vii) For able-bodied adults subject to the time limit of § 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in § 273.24(a)(1)(i). An individual shall report this information in accordance with the reporting system for income to which he is subject.

(2) Certified households must report changes within 10 days of the date the change becomes known to the household. For reportable changes of income, the State agency may require that change to be reported as early as within 10 days of the date that the household becomes aware of the change or as late as within 10 days of the date that the household receives the first payment attributable to the change. For example, in the case of new employment, the State may require the household to report the change within 10 days of the date that the household becomes aware of the new employment, within 10 days of the date the employment begins or within 10 days of the date that the household receives its first paycheck. For households subject to semi-annual reporting, the household must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 days within which to report the change. Optional procedures for reporting changes are contained in paragraph (f) of this section for households in States with forms for jointly reporting food stamp and public assistance

changes and food stamp and general assistance changes.

(3) An applying household shall report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in paragraph (a)(1) of this section, which occur after the interview but before the date of the notice of eligibility, shall be reported by the household within 10 days of the date of the notice.

(4) The State agency may establish a system of quarterly reporting in lieu of the change reporting requirements specified under paragraph (a)(1) of this section. The following requirements are applicable to quarterly reporting systems:

(i) *Included households.* The State agency may include all households within a quarterly reporting system, except migrant or seasonal farmworker households, households that have no earned income and in which all adult members are elderly or disabled, households in which all members are homeless individuals, or households subject to the reporting requirement under paragraph (a)(1)(vii) of this section. The State agency may also limit quarterly reporting to specific categories of households.

(ii) *Notification of the quarterly reporting requirement.* The State agency must notify households of the quarterly reporting requirement, including the consequences of failure to file a report, at initial certification and recertification.

(iii) *Failure to file a complete form by the specified filing date.* If a household fails to file a complete report by the specified filing date, the State agency will send a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated. The State agency may combine the notice of a missing or incomplete report with the adequate notice of termination described in paragraph (a)(4)(v) of this section.

(iv) *Content of the quarterly report form.* The State agency may include all of the items subject to reporting under paragraph (a)(1) of this section in the quarterly report, except changes reportable under paragraphs (a)(1)(vii) or (a)(1)(viii) of this section, or may limit the report to specific items while requiring that households report other items through the use of the change report form.

(v) *Reduction or termination of benefits.* If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that it will be received by the household no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

(vi) *Changes reported outside of the quarterly report.* The State agency must act on any changes reported outside of the quarterly report in accordance with paragraph (c) of this section.

(vii) *Sole reporting requirement.* The quarterly report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that able-bodied adults subject to the time limit of § 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(5) The State agency may establish a simplified reporting system in lieu of the change reporting requirements specified under paragraph (a)(1) of this section. The following requirements are applicable to simplified reporting systems:

(i) *Included households.* The State agency may include any household certified for at least 4 months within a simplified reporting system.

(ii) *Notification of simplified reporting requirement.* At the initial certification, recertification and when the State agency transfers the households to simplified reporting, the State agency shall provide the household with the following:

(A) A written and oral explanation of how simplified reporting works;

(B) A written and oral explanation of the reporting requirements including:

(*1*) What needs to be reported and verified;

(*2*) When the report is due;

(*3*) How to obtain assistance; and

(*4*) The consequences of failing to file a report.

(C) Special assistance in completing and filing periodic reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(D) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the periodic report.

(iii) *Periodic report.* (A) The State agency may require a household to submit a periodic report on its circumstances from once every 4 months up to once every 6 months. The State agency need not require a household certified for 6 months or less to submit a periodic report during its certification period. However, except for households in which all adults are elderly or disabled with no earned income, a household certified for more than 6 months must submit a periodic report at least once every 6 months. Households in which all adults are elderly or disabled with no earned income must not be required to submit periodic reports more frequently than once a year.

(B) The periodic report form must request from the household information on any changes in circumstances in accordance with paragraphs (a)(1)(i) through (a)(1)(vii) of this section and conform to the requirements of paragraph (b)(2) of this section.

(C) If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

(D) If a household fails to file a complete report by the specified filing date, the State agency will send a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated. The State agency may combine the notice of a missing or incomplete report with the adequate notice of termination described in paragraph (a)(5)(iii)(C) of this section.

(E) The periodic report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that a household required to report less frequently than quarterly shall report when its monthly gross income exceeds the monthly gross income limit for its household size in accordance with paragraph (a)(5)(v) of this section, and able-bodied adults subject to the time limit of § 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(iv) *Processing periodic reports.* In selecting a due date for the periodic report, the State agency must provide itself sufficient time to process reports so that households will receive adequate notice of action on the report in the first month of the new reporting period.

(v) *Reporting when gross income exceeds 130 percent of poverty.* A household subject to simplified reporting in accordance with paragraph (a)(5)(i) of this section, whether or not it is required to submit a periodic report, must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9(a)(1). The household shall use the monthly gross income limit for the household size that existed at the time of its most recent certification or recertification, regardless of any subsequent changes in its household size.

(vi) *State agency action on changes reported outside of a periodic report.* The

State agency must act when the household reports that its gross monthly income exceeds the gross monthly income limit for its household size. For other changes, the State agency need not act if the household reports a change for another public assistance program in which it is participating and the change does not trigger action in that other program but results in a decrease in the household's food stamp benefit. The State agency must act on all other changes reported by a household outside of a periodic report in accordance with one of the following two methods:

(A) The State agency must act on any change in household circumstances in accordance with paragraph (c) of this section; or

(B) The State agency must act on any change in accordance with paragraph (c)(1) of this section if it would increase the household's benefits. The State agency must not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed in accordance with § 273.13(b)(12);

(2) The State agency has information about the household's circumstances considered verified upon receipt; or

(3) There has been a change in the household's PA grant, or GA grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2).

(vii) *State plan requirement.* A State agency that chooses to use simplified reporting procedures in accordance with this section must state in its State plan of operation that it has implemented simplified reporting and specify the types of households to whom the reporting requirement applies.

(6) For households eligible for the child support exclusion at § 273.9(c)(17) or deduction at § 273.9(d)(5), the State agency may use information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to utilize information provided by their State CSE agency in accordance with this paragraph (a)(6) must specify in their State plan of operation that they have selected this option. If the State agency chooses not to utilize information provided by its State CSE agency, the State agency may make reporting child support payments an optional change reporting item in accordance with paragraph (a)(5) of this section.The State agency shall process the reports in accordance with procedures for the systems used in budgeting the household's income and deductions. The following requirements apply to quarterly reports:

(i) The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report. If the household does not file the report by the due date or files an incomplete report, the State agency shall provide the household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If the household does not file a complete report by the extended filing date as specified in the reminder notice, the State agency shall determine the household's eligibility and benefits without consideration of the child support deduction. The State agency shall not terminate the benefits of a household for failure to submit a quarterly report unless the household is otherwise ineligible. The State agency shall send the household an adequate notice as defined in § 271.2 of this chapter if the household fails to submit a complete report or if the information contained on a complete report results in a reduction or termination of benefits. The quarterly report shall meet the requirements specified in paragraph (b) of this section. The State agency may combine the content of the reminder notice and the adequate notice as long as the notice meets the requirements of the individual notices.

(ii) The quarterly report form, if required, shall be the sole reporting requirement for reporting child support payments during the certification period. Households excluded from monthly reporting as specified in § 273.21(b) and households required to submit monthly reports shall not be required to submit quarterly reports.

(7) State agencies shall not impose any food stamp reporting requirements on households except as provided in paragraph (a) of this section.

(b) *Report forms.* (1) The State agency shall provide the household with a form for reporting the changes required in paragraph (a)(1) of this section to be reported within 10 days and shall pay the postage for return of the form. The change report form shall, at a minimum, include the following:

(i) A space for the household to report whether the change shall continue beyond the report month;

(ii) The civil and criminal penalties for violations of the Act in understandable terms and in prominent and boldface lettering;

(iii) A reminder to the household of its right to claim actual utility costs if its costs exceed the standard;

(iv) The number of the food stamp office and a toll-free number or a number where collect calls will be accepted for households outside the local calling area; and

(v) A statement describing the changes in household circumstances contained in § 273.12(a)(1) that must be reported and a statement which clearly informs the household that it is required to report these changes.

(vi) If the State agency has chosen to disregard reported changes that affect some deductions in accordance with paragraph (c) of this section, a statement explaining that the State agency will not change certain deductions until the household's next recertification and identifying those deductions.

(2) The quarterly report form, including the form for the quarterly reporting of the child support obligation, and the periodic report form used in simplified reporting under paragraph (a)(5)(ii) of this section, must:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(b) of this chapter;

(iii) Specify the date by which the agency must receive the form;

(iv) Specify the consequences of submitting a late or incomplete form including whether the State agency shall delay payment if the form is not received by a specified date;

(v) Specify the verification the household must submit with the form;

(vi) Inform the household where to call for help in completing the form;

(vii) Include a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(viii) Include a brief description of the Food Stamp Program fraud penalties;

(ix) Include a statement explaining that the State agency will not change certain deductions until the household's next recertification and identify those deductions if the State agency has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of this section;

(x) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (including the statutory citation, the title of the statute, and the fact that providing Social Security numbers is mandatory), the purpose of requiring Social Security numbers, the routine uses for Social Security numbers, and the effect of not providing Social Security numbers. This statement may be on the form itself or included as an attachment to the form.

(3) Changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

(4) A change report form shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. A change report may be provided to households more often at the State agency's option.

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. However, the State agency has the option to disregard a reported change to an established deduction in accordance with paragraph (c)(4) of this section. If a household reports a change in income, and the new circumstance is expected to continue for at least one month beyond the month in which the change is reported, the State agency may act on the change in accordance with paragraphs (c)(1) and (c)(2) of this section. The time frames in paragraphs (c)(1) and (c)(2) of this section apply to these actions. During the certification period, the State agency shall not act on changes in the medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, require the State agency to contact the household for verification. The State agency shall only act on those changes in medical expenses that it learns about from a source other than the household if those changes are verified upon receipt and do not necessitate contact with the household. Even if there is no change in the allotment, the State agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report. If the reported change affects the household's eligibility or level of benefits, the adjustment shall also be reported to the household. The State agency shall also advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment. The State agency shall document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a personal visit. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* (i) For changes which result in an increase in a household's benefits, other than changes described in paragraph (c)(1)(ii) of this section, the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a $30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

(ii) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50 or more in the household's gross monthly income, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the State agency to adjust the following month's allotment, the State agency shall issue a supplementary ATP or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later. For example, a household reporting a $100 decrease in income at any time during May would have its June allotment increased. If the household reported the change after the 20th of May and it was too late for the State agency to adjust the ATP normally issued on June 1, the State agency would issue a supplementary ATP for the amount of the increase by June 10.

(iii) The State agency may elect to verify changes which result in an increase in a household's benefits in accordance with the verification requirements of § 273.2(f)(8)(ii), prior to taking action on these changes. If the State agency elects this option, it must allow the household 10 days from the date

the change is reported to provide verification required by § 273.2(f)(8)(ii). If the household provides verification within this period, the State shall take action on the changes within the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section. The timeframes shall run from the date the change was reported, not from the date of verification. If, however, the household fails to provide the required verification within 10 days after the change is reported but does provide the verification at a later date, then the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section for taking action on changes shall run from the date verification is provided rather than from the date the change is reported. If the State agency does not elect this option, verification required by § 273.2(f)(8)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If in these circumstances the household does not provide verification, the household's benefits will revert to the original benefit level. Whenever a State agency increases a household's benefits to reflect a reported change and subsequent verification shows that the household was actually eligible for fewer benefits, the State agency shall establish a claim for the overissuance in accordance with § 273.18. In cases where the State agency has determined that a household has refused to cooperate as defined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

(2) *Decreases in benefits.* (i) If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported unless one of the exemptions to the notice of adverse action in § 273.13 (a)(3) or (b) applies. When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. When a notice of adverse action is not used due to one of the exemptions in § 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by § 273.2(f) must be obtained prior to recertification.

(ii) The State agency may suspend a household's certification prospectively for one month if the household becomes temporarily ineligible because of a periodic increase in recurring income or other change not expected to continue in the subsequent month. If the suspended household again becomes eligible, the State agency shall issue benefits to the household on the household's normal issuance date. If the suspended household does not become eligible after one month, the State agency shall terminate the household's certification. Households are responsible for reporting changes as required by paragraph (a) of this section during the period of suspension.

(3) *Unclear information.* During the certification period, the State agency may obtain information about changes in a household's circumstances from which the State agency cannot readily determine the effect of the change on the household's benefit amount. The State agency might receive such unclear information from a third party or from the household itself. The State agency must pursue clarification and verification of household circumstances using the following procedure:

(i) The State agency must issue a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances, which affords the household at least 10 days to respond and to clarify its circumstances, either by telephone or by correspondence, as the State agency directs, and which states the consequences if the household fails to respond to the RFC.

(ii) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency must issue a notice of adverse action as described in § 273.13 which terminates the case, explains the reasons

for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program. When the household responds to the RFC and provides sufficient information, the State agency must act on the new circumstances in accordance with paragraphs (c)(1) or (c)(2) of this section.

(iii) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency may elect to issue a notice of adverse action as described in § 273.13 which suspends the household for 1 month before the termination becomes effective, explains the reasons for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program. If a household responds satisfactorily to the RFC during the period of suspension, the State agency must reinstate the household without requiring a new application, issue the allotment for the month of suspension, and if necessary, adjust the household's participation with a new notice of adverse action.

(4) *State agency option for processing changes in deductible expenses.* (i) If the household reports a change to an established deduction amount during the first six months of the certification period, other than a change in earnings or residence, that would affect the household's eligibility for, or amount of, the deduction under § 273.9(d), the State agency may at its option disregard the change and continue to provide the household the deduction amount that was established at certification until the household's next recertification or after the sixth month for households certified for 12 months. When a household reports a change in residence, the State agency must investigate and take action on potential changes in shelter costs arising from this reported change. However, if a household fails to provide information regarding the associated changes in shelter costs within 10 days of the report, the State agency should send a notice to the household that their allotment will be recalculated without the deduction. The notice will make it clear that the household does not need to await its first regular utility or rental payments to contact the food stamp office. Alternative forms of verification can be accepted, if necessary.

(ii) In the case of a household assigned a 24-month certification period in accordance with § 273.10(f)(1) and (f)(2), the State agency must act on any disregarded changes reported during the first 12 months of the certification period at the required 12-month contact for elderly and disabled households and in the thirteenth month of the certification period for households residing on a reservation who are required to submit monthly reports. Changes reported during the second 12 months of the certification period can be disregarded until the household's next recertification.

(iii) If the State agency chooses to act on changes that affect a deduction, it may not act on changes in only one direction, i.e., changes that only increase or decrease the amount of the deduction, but must act on all changes that affect the deduction.

(iv) The State agency may disregard changes reported by the household in accordance with paragraph (a)(1) of this section and changes it learns of from a source other than the household. The State agency must not disregard new deductions, changes in earned income or changes in shelter costs arising from a reported change in residence until the household's next recertification or after the sixth month of a 12-month certification period but must act on those reports in accordance with paragraphs (c)(1) and (c)(2) of this section. When a household reports a change in residence, the State agency must investigate and take action on potential changes in shelter costs arising from this reported change. However, if a household fails to provide information regarding the associated changes in shelter costs within 10 days of the report, the State agency should send a notice to the household that their allotment will be recalculated without the deduction. The notice will make it clear that the household does not need to await its first regular utility or rental payments to contact the food stamp office. Alternative forms of

verification can be accepted, if necessary.

(v) A State agency that chooses to postpone action on reported changes in deductions in accordance with this paragraph (c) must state in its State plan of operation that it has selected this option and specify the deductions affected.

(d) *Failure to report.* If the State agency discovers that the household failed to report a change as required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household circumstances which it is not required to report in accordance with § 273.12(a)(1). Individuals shall not be disqualified for failing to report a change, unless the individual is disqualified in accordance with the disqualification procedures specified in § 273.16.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include, but are not limited to, adjustments to the income eligibility standards, the shelter and dependent care deductions, the maximum food stamp allotment and the standard deduction; annual and seasonal adjustments to State utility standards; periodic cost-of-living adjustments to Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Temporary Assistance for Needy Families (TANF) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) State agencies shall implement these changes for all households at a specific point in time. Adjustments to Federal standards shall be implemented prospectively regardless of the household's budgeting system. Annual and seasonal adjustments in State utility standards shall also be implemented prospectively for all households.

(A) Adjustments in the maximum food stamp allotment shall be effective in accordance with § 273.10(e)(4)(ii).

(B) Adjustments in the standard deduction shall be effective in accordance with § 273.9(d)(7).

(C) Adjustments in the shelter deduction shall be effective in accordance with § 273.9(d)(8).

(D) Adjustments in the income eligibility standards shall be effective in accordance with § 273.9(a)(3).

(ii) A notice of adverse action shall not be used for these changes. At a minimum, the State agencies shall publicize these mass changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or general notices mailed to households. At its option, the State agency may send the notice described in paragraph (e)(4) of this section or some other type of written explanation of the change. A household whose certification period overlaps a seasonal variation in the State utility standard shall be advised at the time of initial certification of when the adjustment will occur and what the variation in the benefit level will be, if known.

(2) *Mass changes in public assistance and general assistance.* (i) When the State agency makes an overall adjustment to public assistance (PA) payments, corresponding adjustments in households' food stamp benefits shall be handled as a mass change in accordance with the procedures in paragraphs (e) (4), (5) and (6) of this section. When the State agency has at least 30 days, advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the food stamp change shall be effective no later than the month following the month in which the PA change was made.

(ii) State agencies which also administer a general assistance (GA) program shall handle mass adjustments to GA

payments in accordance with the schedules outlined in paragraph (e)(2)(i) and the procedures in paragraphs (e) (4), (5) and (6) of this section. However, where State agencies do not administer both programs, mass changes in GA payments shall be subject to the schedule in paragraph (e)(3) and the procedures in paragraphs (e) (4), (5) and (6) of this section.

(3) *Mass changes in Federal benefits.* The State agency shall establish procedures for making mass changes to reflect cost-of-living adjustments (COLAs) in benefits and any other mass changes under RSDI, SSI, and other programs such as veteran's assistance under title 38 of the United States Code and the Black Lung Program, where information on COLA's is readily available and is applicable to all or a majority of those programs' beneficiaries. A State agency may require households to report the change on the appropriate monthly report or may handle the change using the mass change procedures in this section. If the State agency requires the household to report the information on the monthly report, the State agency shall handle such information in accordance with its normal procedures. Households that are not required to report the change on the monthly report, and households not subject to monthly reporting, shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting these households' SNAP benefit levels in accordance with either paragraph (e)(3)(i) or (e)(3)(ii) of this section.

(i) The State agency may make mass changes by applying percentage increases communicated by the source agency to represent cost-of-living increases provided in other benefit programs. These changes shall be reflected no later than the second allotment issued after the month in which the change becomes effective.

(ii) The State agency may update household income information based on cost-of-living increases supplied by a data source covered under the Computer Matching and Privacy Protection Act of 1988 (CMA) in accordance with § 272.12 of this chapter. The State agency shall take action, including proper notices to households, to terminate, deny or reduce benefits based on this information if it is considered verified upon receipt under § 273.2(f)(9). If the information is not considered verified upon receipt, the State agency shall initiate appropriate action and notice in accordance with § 273.2(f)(9).

(4) *Notice for mass change.* When the State agency makes a mass change in SNAP eligibility or benefits by simultaneously converting the caseload, or that portion of the caseload that is affected, using the percentage increase calculation provided for in § 273.12(e)(3)(i), or by conducting individual desk reviews using information not covered under the Computer Matching and Privacy Protection Act (CMA) in place of a mass change, it shall notify all households whose benefits are reduced or terminated in accordance with the requirements of this paragraph, except for mass changes made under § 273.12(e)(1); and

(i) At a minimum, the State agency shall inform the household of:

(A) The general nature of the change;

(B) Examples of the change's effect on households' allotments;

(C) The month in which the change will take effect;

(D) The household's right to a fair hearing;

(E) The household's right to continue benefits and under what circumstances benefits will be continued pending a fair hearing;

(F) General information on whom to contact for additional information; and

(G) The liability the household will incur for any overissued benefits if the fair hearing decision is adverse.

(ii) At a minimum, the State agency shall notify the household of the mass change or the result of the desk review on the date the household is scheduled to receive the allotment which has been changed.

(iii) In addition, the State shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(5) *Fair hearings.* The household shall be entitled to request a fair hearing

when it is aggrieved by the mass change.

(6) *Continuation of benefits.* A household which requests a fair hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets three criteria;

(i) The household does not specifically waive its right to a continuation of benefits;

(ii) The household requests a fair hearing in accordance with § 273.13(a)(1); and

(iii) The household's fair hearing is based upon improper computation of food stamp eligibility or benefits, or upon misapplication or misinterpretation of Federal law or regulation.

(f) *PA and GA households.* (1) Except as provided in paragraph (f)(2) of this section, PA households have the same reporting requirements as any other food stamp household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food stamp purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food stamp cases are processed jointly in accordance with provisions of § 273.2(j)(3).

(2)(i) State agencies may use a joint change reporting form for households to report changes for both PA and food stamp purposes. Whenever a joint change reporting form is used, the State agency shall insure that adjustments are made in a household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

(ii) State agencies may combine the use of a joint PA/food stamp change reporting form with a PA reporting system that demands the regular submission of reports, such as a monthly reporting system. The State agency shall insure that the procedures in § 273.21(h) are followed.

(3) The State agency may not terminate a household's food stamp benefits solely because it has terminated the household's PA benefits without a separate determination that the household fails to satisfy the eligibility requirements for participation in the Program. Whenever a change results in the reduction or termination of a household's PA benefits within its food stamp certification period, the State agency must follow the procedures set forth below:

(i) If a change in household circumstances requires a reduction or termination in the PA payment and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency must take the following actions:

(A) If the change requires a reduction or termination of food stamp benefits, the State agency must issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the State agency must continue the household's food stamp benefits on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the State agency must conduct the hearing according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the State agency must make the change effective in accordance with the procedures specified in paragraph (c) of this section.

(B) If the household's food stamp benefits will increase as a result of the reduction or termination of PA benefits, the State agency must issue the PA notice of adverse action, but must not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the PA adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits must continue at the previous level. If the household does not appeal, the State agency must make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a

household's benefits must be calculated from the date the PA notice of adverse action period expires.

(ii) Whenever a change results in the termination of a household's PA benefits within its food stamp certification period, and the State agency does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, and the household asks to have its TANF case closed without providing any information on the income of the new household member), the State agency must take the following action:

(A) If the situation requires a reduction or termination of PA benefits, the State agency must issue a request for contact (RFC) in accordance with paragraph (c)(3)(i) of this section at the same time it sends a PA notice of adverse action. Before taking further action, the State agency must wait until the household's PA notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and elects to have its PA benefits continued pending the appeal, the State agency must continue the household's food stamp benefits at the same level. If the household decides not to request a fair hearing and continuation of its PA benefits, the State agency must resume action on the changes as required in paragraph (c)(3) of this section.

(B) If the situation does not require a PA notice of adverse action, the State agency must issue a RFC and take action in accordance with paragraph (c)(3) of this section.

(iii) Depending on the household's response to the RFC, the State agency must take appropriate action, if necessary, to close the household's case or adjust the household's benefit amount.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 273.13 Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area) and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. A notice of adverse action that combines the request for verification of information received through an IEVS computer match shall meet the requirements in § 273.2(f)(9). A notice of adverse action that combines the request for verification of information received through a SAVE computer match shall meet the requirements in § 273.2(f)(10).

(3) The State agency may notify a household that its benefits will be reduced or terminated, no later than the date the household receives, or would have received, its allotment, if the following conditions are met:

(i) The household reports the information which results in the reduction or termination.

(ii) The reported information is in writing and signed by the household.

(iii) The State agency can determine the household's allotment or ineligibility based solely on the information provided by the household as required in paragraph (a)(3)(ii) of this section.

(iv) The household retains its right to a fair hearing as allowed in § 273.15.

(v) The household retains its right to continued benefits if the fair hearing is requested within the time period set by the State agency in accordance with § 273.13(a)(1).

(vi) The State agency continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

(4) The State agency shall notify a household that its benefits will be reduced if an EBT system-error has occurred during the redemption process resulting in an out-of-balance settlement condition. This notification shall be made no later than the date the action is initiated against the household account. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

(b) *Exemptions from notice.* Individual notices of adverse action shall not be provided when:

(1) The State initiates a mass change through means other than computer matches as described in § 273.12(e)(1), (e)(2), or (e)(3)(i).

(2) The State agency determines, based on reliable information, that all members of a household have died.

(3) The State agency determines, based on reliable information, that the household has moved from the project area.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for an intentional Program violation in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member, except as provided in § 273.11(c)(3)(i). A notice of adverse action must be sent to a currently participating household prior to the reduction or termination of benefits if a household member is found through a disqualified recipient match to be within the period of disqualification for an intentional Program violation penalty determined in another State. In the case of applicant households, State agencies shall follow the procedures in § 273.2(f)(11) for issuing notices to the disqualified individual and the remaining household members. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in § 273.16.

(8) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice as provided in § 273.2(i)(4).

(9) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

(10) Converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18.

(11) The State agency is terminating the eligibility of a resident of a drug or

alcoholic treatment center or a group living arrangement if the facility loses either its certification from the appropriate agency or agencies of the State (as defined in § 271.2) or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. However, residents of group living arrangements applying on their own behalf are still eligible to participate.

(12) The household voluntarily requests, in writing or in the presence of a caseworker, that its participation be terminated. If the household does not provide a written request, the State agency shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

(13) The State agency determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. The State agency shall inform the household of its termination no later than its next scheduled issuance date. While the State agency may inform the household before its next issuance date, the State agency shall not delay terminating the household's participation in order to provide advance notice.

(14) The State agency initiates recoupment of a claim as specified in § 273.18(g)(4) against a household which has previously received a notice of adverse action with respect to such claim.

(c) *Optional notice*. The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 273.14 Recertification.

(a) *General*. No household may participate beyond the expiration of the certification period assigned in accordance with § 273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

(b) *Recertification process*—(1) *Notice of expiration*. (i) The State agency shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. The State agency shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed PA and GA households need not receive a separate food stamp notice if they are recertified for food stamps at the same time as their PA or GA redetermination.

(ii) Each State agency shall develop a NOE. The NOE must contain the following:

(A) The date the certification period expires;

(B) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits;

(C) The consequences of failure to apply for recertification in a timely manner;

(D) Notice of the right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address;

(E) Information on alternative submission methods available to households which cannot come into the certification office or do not have an authorized representative and how to exercise these options;

(F) The address of the office where the application must be filed;

(G) The household's right to request a fair hearing if the recertification is denied or if the household objects to the benefit issuance;

(H) Notice that any household consisting only of Supplemental Security

Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration;

(I) Notice that failure to attend an interview may result in delay or denial of benefits; and

(J) Notice that the household is responsible for rescheduling a missed interview and for providing required verification information.

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter that allows for either in-person or telephone interviews, and a statement of needed verification required by §273.2(c)(5) with the NOE.

(2) *Application*. The State agency must develop an application to be used by households when applying for recertification. It may be the same as the initial application, a simplified version, a monthly reporting form, or other method such as annotating changes on the initial application form. A new household signature and date is required at the time of application for recertification. The recertification process can only be used for those households which apply for recertification prior to the end of their current certification period, except for delayed applications as specified in paragraph (e)(3) of this section. The process, at a minimum, must elicit from the household sufficient information that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The State agency must notify the applicant of information which is specified in §273.2(b)(2), and provide the household with a notice of required verification as specified in §273.2(c)(5).

(3) *Interview*. As part of the recertification process, the State agency must conduct a face-to-face interview with a member of the household or its authorized representative at least once every 12 months for households certified for 12 months or less. The provisions of §273.2(e) also apply to interviews for recertification. The State agency may choose not to interview the household at interim recertifications within the 12-month period. The requirement for a face-to-face interview once every 12 months may be waived in accordance with §273.2(e)(2).

(ii) If a household receives PA/GA and will be recertified for food stamps more than once in a 12-month period, the State agency may choose to conduct a face-to-face interview with that household only once during that period. At any other recertification during that year period, the State agency may interview the household by telephone, conduct a home visit, or recertify the household by mail.

(iii) State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires. If a household misses its scheduled interview, the State agency shall send the household a Notice of Missed Interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the State agency shall schedule a second interview.

(4) *Verification*. Information provided by the household shall be verified in accordance with §273.2(f)(8)(i). The State agency shall provide the household a notice of required verification as provided in §273.2(c)(5) and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information. Any household whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification and benefits cannot be prorated.

(c) *Timely application for recertification*. (1) Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the NOE is received to file a timely application for recertification.

(2) Other households reporting required changes in circumstances that submit applications by the 15th day of

the last month of the certification period shall be considered to have made a timely application for recertification.

(3) For monthly reporting households, the filing deadline shall be either the 15th of the last month of the certification period or the normal date for filing a monthly report, at the State agency's option. The option chosen must be uniformly applied to the State agency's entire monthly reporting caseload.

(4) For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices in accordance with § 273.2(k)(1), an application shall be considered filed for normal processing purposes when the signed application is received by the SSA.

(d) *Timely processing*. (1) Households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures shall be notified of their eligibility or ineligibility. Eligible households shall be provided an opportunity to receive benefits no later than 30 calendar days after the date the household received its last allotment.

(2) Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. In addition, the State agency shall provide households that are determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

(e) *Delayed processing*. (1) If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(2) If a household files an application before the end of the certification period, but fails to take a required action, the State agency may deny the case at that time, at the end of the certification period, or at the end of 30 days. Notwithstanding the State's right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month's benefits for the initial month of the new certification period. If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, the State agency shall reopen the case and provide benefits retroactive to the date the household takes the required action. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(3) If a household files an application within 30 days after the end of the certification period, the application shall be considered an application for recertification; however, benefits must be prorated in accordance with § 273.10(a). If a household's application for recertification is delayed beyond the first of the month of what would have been its new certification period through the fault of the State agency, the household's benefits for the new certification period shall be prorated based on the date of the new application, and the State agency shall provide restored benefits to the household back to the date the household's certification period should have begun had the State agency not erred and the household been able to apply timely.

(f) *Expedited service*. A State agency is not required to apply the expedited service provisions of § 273.2(i) at recertification if the household applies for recertification before the end of its current certification period.

[Amdt. 364, 61 FR 54318, Oct. 17, 1996, as amended by Amdt. 388, 65 FR 70210, Nov. 21, 2000]

Subpart F—Disqualification and Claims

§ 273.15 Fair hearings.

(a) *Availability of hearings.* Except as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the houshold in the Program.

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits the household to further appeal a local decision to a State level fair hearing. State agencies may adopt local level hearings in some project areas and maintain only State level hearings in other project areas.

(c) *Timely action on hearings*—(1) *State level hearings.* Within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. Decisions which result in an increase in household benefits shall be reflected in the coupon allotment within 10 days of the receipt of the hearing decision even if the State agency must provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. However, the State agency may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

(2) *Local level hearings.* Within 45 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(3) *Appeals of local level decisions.* Within 45 days of receipt of any request for a State level review of a decision or for a new State level hearing, the State agency shall assure that the review or the new hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(4) *Household requests for postponement.* The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

(d) *Agency conferences.* (1) The State agency shall offer agency conferences to households which wish to contest a denial of expedited service under the procedures in § 273.2(i). The State agency may also offer agency conferences to households adversely affected by an agency action. The State agency shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

(2) An agency conference for households contesting a denial of expedited service shall be scheduled within 2 working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(e) *Consolidated hearings.* State agencies may respond to a series of individual requests for hearings by conducting a single group hearing. State agencies may consolidate only cases where individual issues of fact are not disputed and where related issues of State and/or Federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own

case or have its case presented by a representative.

(f) *Notification of right to request hearing.* At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the State agency that it disagrees with a State agency action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service.

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

(h) *Request for hearing.* A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(i) *State agency responsibilities on hearing requests.* (1) Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the request speaks a language other than English and the State agency is required by § 272.4(c)(3) to provide bilingual staff or interpreters who speak the appropriate language, the State agency shall insure that the hearing procedures are verbally explained in that language. Upon request, the State agency shall also help a household with its hearing request. If a household makes an oral request for a hearing, the State agency shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits if the decision so indicates before they leave the area.

(3) The State agency shall publish clearly written uniform rules of procedure that conform to these regulations and shall make the rules available to any interested party. At a minimum, the uniform rules of procedure shall include the time limits for hearing requests as specified in paragraph (g) of this section, advance notification requirements as specified in paragraph (i)(1) of this section, hearing timeliness standards as specified in paragraph (c) of this section, and the rights and responsibilities of persons requesting a hearing as specified in paragraph (p) of this section.

(j) *Denial or dismissal of request for hearing.* (1) The State agency must not deny or dismiss a request for a hearing unless:

(i) The State agency does not receive the request within the appropriate time frame specified in paragraph (g) of this section, provided that the State agency considers untimely requests for hearings as requests for restoration of lost benefits in accordance with § 273.17;

(ii) The household or its representative fails, without good cause, to appear at the scheduled hearing;

(iii) The household or its representative withdraws the request in writing; or

(iv) The household or its representative orally withdraws the request and

the State agency has elected to allow such oral requests.

(2) The State agency electing to accept an oral expression from the household or its representative to withdraw a fair hearing may discuss the option with the household when it appears that the State agency and household have resolved issues related to the fair hearing. However, the State agency is prohibited from coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request. The State agency must provide a written notice to the household within 10 days of the household's request confirming the withdrawal request and providing the household with an opportunity to request a hearing. The written notice must advise the household it has 10 days from the date it receives the notice to advise the State agency of its desire to request, or reinstate, the hearing. If the household timely advises the State agency that it wishes to reinstate the fair hearing, the State agency must provide the household with a fair hearing, within the time frames specified in paragraph (c) of this section and beginning the date the household advises the State agency that it wishes to reinstate its request. The State agency must reinstate a fair hearing as requested from a household at least once. The State agency must not deny a household's request for a fair hearing if the household is aggrieved by a State agency action that differs from the reinstated action.

(k) *Continuation of benefits.* (1) If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in § 273.13, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. The form for requesting a fair hearing shall contain space for the household to indicate whether or not continued benefits are requested. If the form does not positively indicate that the household has waived continuation of benefits, the State agency shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances, with one exception. In the case of an EBT adjustment, as defined in § 274.12(f)(4)(ii) of this chapter, once an adverse action is upheld, the State agency shall immediately debit the household's account for the total amount stated in its original notice. If there are no benefits or insufficient benefits remaining in the household's account at the time the State agency action is upheld, the State agency may only make the adjustment from the next month's benefits, regardless of whether this satisfies the full adjustment amount. If a hearing request is not made within the period provided by the notice of adverse action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the State agency shall reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted by the State agency.

(2) Once continued or reinstated, the State agency must not reduce or terminate benefits prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is

pending and the household fails to request a hearing after the subsequent notice of adverse action;

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(v) The household, or its representative, orally withdrew its request for a fair hearing and did not advise the State agency of its desire to reinstate the fair hearing within the time frame specified in paragraph (j)(2) of this section.

(3) The State agency shall promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(l) *Notification of time and place of hearing*. The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or its representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

(m) *Hearing official*. Hearings shall be conducted by an impartial official(s) who: Does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the eligibility worker who took the action. State level hearings shall be conducted by State level personnel and shall not be conducted by local level personnel.

(1) *Designation of hearing official*. The hearing official shall be:

(i) An employee of the State agency;

(ii) An individual under contract with the State agency;

(iii) An employee of another public agency designated by the State agency to conduct hearings;

(iv) A member or official of a statutory board or other legal entity designated by the State agency to conduct hearings; or

(v) An executive officer of the State agency, a panel of officials of the State agency or a person or persons expressly appointed to conduct State level hearings or to review State and/or local level hearing decisions.

(2) *Power and duties*. The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Insure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;

(vi) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the State agency, in accordance with paragraph (q) of this section, which will resolve the dispute.

(n) *Hearing authority*. The hearing authority shall be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority shall be subject to the requirements specified in paragraph (m) of this section.

(o) *Attendance at hearing*. The hearing shall be attended by a representative of

the State agency and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space limitations exist.

(p) *Household rights during hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(q) *Hearing decisions.* (1) Decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with § 272.1(f). This record shall also be available to the household or its representative at any reasonable time for copying and inspection.

(2) A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

(3) The household and the local agency shall each be notified in writing of: The decision; the reasons for the decision in accordance with paragraph (q)(2) of this section; the available appeal rights; and that the household's benefits will be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision. The following are additional notice requirements and the available appeal rights:

(i) After a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the decision. In addition, in States which provide for rehearings of State level decisions, the household shall be notified of the right to pursue a rehearing.

(ii) After a local level hearing decision which upholds the State agency action, the household shall be notified of the right to request a completely new State agency level hearing, and that a reversal of the decision may result in the restoration of lost benefits to the household. In addition, the household shall be advised that if a new hearing would pose an inconvenience to the household, a State level review of the decision based on the

hearing record may be requested instead of a new hearing. A clear description of the two appeal procedures must be included to enable the household to make an informed choice, if it wishes to appeal. If the household indicates that it wishes to appeal, but does not select the method, the State agency shall proceed with a new State level hearing.

(4) If the household wishes to appeal a local level hearing decision, the appeal request must be filed within 15 days of the mailing date of the hearing decision notice. Within 45 days of receipt of any request for a State level review of the decision or for a new State level hearing, the State agency shall assure that the review or the hearing is conducted, and that a decision is reached and reflected in the coupon allotment. If a new hearing will not be held, the State level hearing official will review the local level hearing record to determine if the local decision was supported by substantial evidence. State level review procedures shall provide for notifying the local agency and the household that each may file a summary of arguments which shall become a part of the record if timely received. Both parties shall be advised that failure to file a summary will not be considered in deciding the case and that the summary must be postmarked within 10 days of receipt of the notice.

(5) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 272.1(c), and provided identifying names and addresses of household members and other members of the public are kept confidential.

(r) *Implementation of local level hearing decision*. (1) In the event the local hearing decision upholds the State agency action, any benefits to the household which were continued pending the hearing shall be discontinued beginning with the next scheduled issuance, regardless of whether or not an appeal is filed. Collection action for any claims against the household for overissuances shall be postponed until the 15-day appeal request period has elapsed, or if an appeal is requested, until the State agency upholds the decision of the local hearing authority.

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45-day time limit allowed for local hearing procedures. Any lost benefits due to the household shall be issued as soon as administratively feasible. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(s) *Implementation of final State agency decisions*. The State agency is responsible for insuring that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in paragraph (c) of this section.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(2) When the hearing authority upholds the State agency's action, a claim against the household for any overissuances shall be prepared in accordance with § 273.18.

(t) *Review of appeals of local level decisions*. State agencies which adopt a

local level hearing system shall establish a procedure for monitoring local level hearing decisions. The number of local level decisions overturned upon appeal to a State level hearing shall be examined. If the number of reversed decisions is excessive, the State agency shall take corrective action.

(u) *Departmental review of decisions contrary to Federal law and regulations.* [Reserved]

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33385, June 8, 1979; Amdt. 146, 46 FR 1427, Jan. 6, 1981; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994; 64 FR 48938, Sept. 9, 1999; Amdt. 378, 65 FR 41325, July 5, 2000; Amdt. 388, 65 FR 70211, Nov. 21, 2000]

§ 273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in § 273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual.

(2) Each State agency shall establish a system for conducting administrative disqualifications for intentional Program violation which conforms with the procedures outlined in paragraph (e) of this section. FNS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (g)(1) of this section, with the State's Attorney General's Office or, where necessary, with county prosecutors. FNS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FNS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FNS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected intentional Program violation claims through the courts.

(3) The State agency shall base administrative disqualifications for intentional Program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (g) of this section.

However, any State agency has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section or to sign disqualification consent agreements for cases of deferred adjudication in accordance with paragraph (h) of this section. Any State agency which chooses either of these options may base administrative disqualifications for intentional Program violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

(b) *Disqualification penalties.* (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twenty four months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) An individual convicted by a Federal, State or local court of having trafficked benefits for an aggregate amount of $500 or more shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(5) Except as provided under paragraph (b)(1)(iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.

(6) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) and (b)(3) of this section.

(7) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section unless it is contrary to the court order.

(8) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(9) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(10) For the disqualification periods in paragraphs (b)(1), (b)(5) or (b)(6) of this section, if the offense occurred prior to the implementation of these penalties, the State agency may establish a policy of disqualifying these individuals in accordance with the disqualification periods in effect at the time of the offense. This policy must be

consistently applied for all affected individuals.

(11) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(12) Even though only the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims must be established and collected in accordance with the procedures set forth in § 273.18.

(13) The individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

(c) *Definition of intentional Program violation.* Intentional Program violations shall consist of having intentionally:

(1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

(d) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional Program violation each time it applies for Program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(e) *Disqualification hearings.* The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.

(1) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

(2) *Disqualification hearing procedures.* (i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only disqualification hearings.

(ii) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(iii) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of

postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the individual of his/her right to obtain a copy of the State agency's published hearing procedures upon request.

(v) Each State agency shall develop an advance notice form which contains the information required by this section.

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph

(e)(3)(ii) of this section, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing*. A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Program. Since the State agency cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed intentional Program violation, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of Program violation.

(6) *Criteria for determining intentional Program violation*. The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

(7) *Decision format*. The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Imposition of disqualification penalties*. (i) If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determination of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualifed member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(9) *Notification of hearing decision*. (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice

which informs the household member of the decision.

(ii) If the hearing official finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Program benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(iii) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have committed intentional Program violation. The form shall contain the information required by this section.

(10) *Local level hearings.* (i) The State agency may choose to provide administrative disqualification hearings at the local level in some or all of its project areas with a right to appeal to a State level hearing. If a local level disqualification hearing determines that a household member committed intentional Program violation, the notification of hearing decision described in paragraph (e)(9) of this section shall also inform the household member of the right to appeal the decision within 15 days after the receipt of the notice, the date the disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the household member appeals the local level decision, the advance notice of hearing, as described in paragraph (e)(3) of this section, shall be provided at least 10 days in advance of the scheduled State level hearing and shall also inform the household member that the local hearing decision will be upheld if the household or its representative fails to appear for the hearing without good cause. When a local level decision is appealed, the State agency shall conduct the State level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case. The prior decision shall not be taken into consideration by the State hearing officer in making the final determination. In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this section for State level hearings.

(ii) The State agency shall develop appropriate forms which contain the information required by this section for notification of a local level hearing decision and advance notice of a scheduled State level hearing for appeal of a local level decision.

(f) *Waived hearings.* Each State agency shall have the option of establishing procedures to allow accused individuals to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall provide written notification to the household member suspected of intentional Program violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.

(ii) The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;

(D) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*1*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*2*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(iii) The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information described in paragraph (e)(3) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by paragraph (e)(3)(i)(A) of this section.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification. However, if the act of intentional Program violation which led to the disqualification occurred prior to the written notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed

regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* The State agency shall provide written notice to the household member prior to disqualification. The State agency shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice(s) shall conform to the requirements for notification of a hearing decision specified in paragraph (e)(9) of this section. A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(4) *Waiver of hearing at local level.* Any State agency which has adopted the two-tiered approach for administrative disqualification hearings may also provide for waiver of the right to disqualification hearing procedures outlined in this section.

(g) *Court referrals.* Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with paragraph (a) of this section shall refer appropriate cases for prosecution by a court of appropriate jurisdiction in accordance with the requirements outlined in this section.

(1) *Appropriate cases.* (i) The State agency shall refer cases of alleged intentional Program violation for prosecution in accordance with an agreement with prosecutors or State law. The agreement shall provide for prosecution of intentional Program violation cases and include the understanding that prosection will be pursued in cases where appropriate. This agreement shall also include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from intentional Program violation.

(ii) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large amounts of food stamps are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal penalties for such violations.

(2) *Imposition of disqualification penalties.* (i) State agencies shall disqualify an individual found guilty of intentional Program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(ii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the court finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(h) *Deferred adjudication.* Each State agency shall have the option of establishing procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. State agencies are encouraged to use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor. For State agencies which choose the option of allowing individuals to sign disqualification consent agreements in cases referred for prosecution, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall enter into an agreement with the State's Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(ii) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication shall include, at a minimum:

(A) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block.

(B) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil of criminal misrepresentation or fraud.

(C) A warning that the disqualification periods for intentional Program violations under the Food Stamp Program are as specified in paragraph (b) of this section, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(D) A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(iii) The State agency shall develop a disqualification consent agreement, or language to be included in the agreements reached between the prosecutors and accused individuals or in the court orders, which contains the information required by this section for notifying a household member suspected of intentional Program violation of the consequences of signing a disqualification consent agreement.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section, unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the State agency shall

disqualify the household member in accordance with the court order.

(ii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification*. If the household member suspected of intentional Program violation signs the disqualification consent agreement, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(i) *Reporting requirements*. (1) Each State agency shall report to FNS information concerning individuals disqualified for an intentional Program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction, and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be submitted to FNS so that it is received no more than 30 days after the date the disqualification took effect.

(2) State agencies shall report information concerning each individual disqualified for an intentional Program violation to FNS. FNS will maintain this information and establish the format for its use.

(i) State agencies shall report information to the disqualified recipient database in accordance with procedures specified by FNS.

(ii) State agencies shall access disqualified recipient information from the database that allows users to check for current and prior disqualifications.

(3) The elements to be reported to FNS are name, social security number, date of birth, gender, disqualification number, disqualification decision date, disqualification start date, length of disqualification period (in months), locality code, and the title, location and telephone number of the locality contact. These elements shall be reported in accordance with procedures prescribed by FNS.

(i) The disqualification decision date is the date that a disqualification decision was made at either an administrative or judicial hearing, or the date an individual signed a waiver to forego an administrative or judicial hearing and accept a disqualification penalty.

(ii) The disqualification start date is the date the disqualification penalty was imposed by any of the means identified in § 273.16(i)(3)(i).

(iii) The locality contact is a person, position or entity designated by a State agency as the point of contact for other State agencies to verify disqualification records supplied to the disqualified recipient database by the locality contact's State.

(4) All data submitted by State agencies will be available for use by any State agency that is currently under a valid signed Matching Agreement with FNS.

(i) State agencies shall, at a minimum, use the data to determine the eligibility of individual Program applicants prior to certification, and for 1 year following implementation, to determine the eligibility at recertification of its currently participating caseload. In lieu of the 1-year match at recertification requirement and for the

same purpose, State agencies may conduct a one-time match of their participating caseload against active disqualifications in the disqualified recipient database. State agencies have the option of exempting minors from this match.

(ii) State agencies shall also use the disqualified recipient database for the purpose of determining the eligibility of newly added household members.

(5) The disqualification of an individual for an intentional Program violation in one political jurisdiction shall be valid in another. However, one or more disqualifications for an intentional Program violation, which occurred prior to April 1, 1983, shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are encouraged to identify and report to FNS any individuals disqualified for an intentional Program violation prior to April 1, 1983. A State agency submitting such historical information should take steps to ensure the availability of appropriate documentation to support the disqualifications in the event it is contacted for independent verification.

(6) If a State determines that supporting documentation for a disqualification record that it has entered is inadequate or nonexistent, the State agency shall act to remove the record from the database.

(7) If a court of appropriate jurisdiction reverses a disqualification for an intentional Program violation, the State agency shall take action to delete the record in the database that contains information related to the disqualification that was reversed in accordance with instructions provided by FNS.

(8) If an individual disputes the accuracy of the disqualification record pertaining to him/herself the State agency submitting such record(s) shall be responsible for providing FNS with prompt verification of the accuracy of the record.

(i) If a State agency is unable to demonstrate to the satisfaction of FNS that the information in question is correct, the State agency shall immediately, upon direction from FNS, take action to delete the information from the disqualified recipient database.

(ii) In those instances where the State agency is able to demonstrate to the satisfaction of FNS that the information in question is correct, the individual shall have an opportunity to submit a brief statement representing his or her position for the record. The State agency shall make the individual's statement a permanent part of the case record documentation on the disqualification record in question, and shall make the statement available to each State agency requesting an independent verification of that disqualification.

(j) *Reversed disqualifications.* In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17(e).

[Amdt. 242, 48 FR 6855, Feb. 15, 1983, as amended by Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 357, 60 FR 43515, Aug. 22, 1995; 66 FR 4468, Jan. 17, 2001; 77 FR 48057, Aug. 13, 2012]

§ 273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(i) The date the State agency receives a request for restoration from a household; or

(ii) The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

(2) The State agency shall restore to households benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a State agency action, the benefits shall be restored for a period of not more than twelve months from the first of the following dates:

(i) The date the State agency receives a request for restoration:

(ii) If no request for restoration is received, the date the fair hearing action was initiated; but

(iii) Never more than one year from when the State agency is notified of, or discovers, the loss.

(3) Benefits shall be restored even if the household is currently ineligible.

(b) *Errors discovered by the State agency*. If the State agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the State agency shall automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits shall not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(c) *Disputed benefits*. (1) If the State agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the State agency or any other action taken by the State agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the case file, does not agree, the household has 90 days from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored*. After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12-month time limits described in paragraphs (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows:

(1) If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period.

(ii) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures in § 273.2(h).

(iii) If a household's benefits were erroneously terminated, the month the

loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.

(iv) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, the State agency shall advise the household of what information must be provided to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively.

(e) *Lost benefits to individuals disqualified for intentional Program violation*. Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of State agency notification, only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action. For each month the individual was disqualified, not to exceed twelve months prior to State agency notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

(f) *Method of restoration*. Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition*. Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures*. Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to

restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 225, 48 FR 16831, Apr. 19, 1983; Amdt. 314, 54 FR 24518, June 7, 1989; Amdt. 356, 59 FR 29713, June 9, 1994]

§ 273.18 Claims against households.

(a) *General.* (1) A recipient claim is an amount owed because of:

(i) Benefits that are overpaid or

(ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection. If you do not meet these standards, you must take corrective action to correct any deficiencies in the plan.

(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

(ii) A person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(b) *Types of claims.* There are three types of claims:

An . . .	is . . .
(1) Intentional Program violation (IPV) claim.	any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in § 273.16.
(2) Inadvertent household error (IHE) claim.	any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.
(3) Agency error (AE) claim	any claim for an overpayment caused by an action or failure to take action by the State agency.

(c) *Calculating the claim amount*—(1) *Claims not related to trafficking.*

(i) As a State agency, you		
must calculate a claim . . .	and . . .	and . . .
back to at least twelve months prior to when you become aware of the overpayment.	for an IPV claim, the claim must be calculated back to the month the act of IPV first occurred.	for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment.

(ii) The actual steps for calculating a claim are		
you . . .	unless . . .	then . . .
(A) determine the correct amount of benefits for each month that a household received an overpayment.		

you . . .		
(B) do not apply the earned income deduction to that part of any earned income that the household failed to report in a timely manner when this act is the basis for the claim.	the claim is an AE claim	apply the earned income deduction.
(C) subtract the correct amount of benefits from the benefits actually received. The answer is the amount of the overpayment.	this answer is zero or negative.	dispose of the claim referral.
(D) reduce the overpayment amount by any EBT benefits expunged from the household's EBT benefit account in accordance with your own procedures. The difference is the amount of the claim.	you are not aware of any expunged benefits.	the amount of the overpayment calculated in paragraph (c)(1)(ii)(C) of this section is the amount of the claim.

(2) *Trafficking-related claims*. Claims arising from trafficking-related offenses will be the value of the trafficked benefits as determined by:

(i) The individual's admission;

(ii) Adjudication; or

(iii) The documentation that forms the basis for the trafficking determination.

(d) *Claim referral management*.

(1) As a State agency, you		
must . . .	and you . . .	unless . . .
establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.	will ensure that no less than 90 percent of all claim referrals are either established or disposed of according to this time frame.	you develop and use your own standards and procedures that have been approved by us (see paragraph (d)(2) of this section).

(2) Instead of using the standard in paragraph (d)(1) of this section, you may opt to develop and follow your own plan for the efficient and effective management of claim referrals.

(i) This plan must be approved by us.

(ii) At a minimum, this plan must include:

(A) Justification as to why your standards and procedures will be more efficient and effective than our claim referral standard;

(B) Procedures for the detection and referral of potential overpayments or trafficking violations;

(C) Time frames and procedures for tracking claim referrals through date of discovery to date of establishment;

(D) A description of the process to ensure that these time frames are being met;

(E) Any special procedures and time frames for IPV referrals; and

(F) A procedure to track and follow-up on IPV claim referrals when these referrals are referred for prosecutorial or similar action.

(3) States must establish claims even if they cannot be established within the timeframes outlined under paragraph (d) of this section.

(e) *Initiating collection action and managing claims*—(1) *Applicability*. State agencies must begin collection action on all claims unless the conditions under paragraph (e)(2) of this section apply.

(2) *Pre-establishment cost effectiveness determination*. A State agency may opt not to establish and subsequently collect an overpayment that is not cost effective. The following is our cost-effectiveness policy for State agencies:

(i) You may follow your own cost effectiveness plan and		
opt not to establish any claim if . . .	unless . . .	or . . .
you determine that the claim referral is not cost effective to pursue.	you do not have a cost-effectiveness plan approved by us.	you already established the claim or discovered the overpayment in a quality control review.
(ii) Or you may follow the FNS threshold and		
opt not to establish any claim if . . .	unless . . .	or . . .
you determine that the claim referral is $125 or less.	the household is currently participating in the Program.	you already established the claim or discovered the overpayment in a quality control review.

(3) *Notification of claim*. (i) Each State agency must develop and mail or otherwise deliver to the household written notification to begin collection action on any claim.

(ii) The claim will be considered established for tracking purposes as of the date of the initial demand letter or written notification.

(iii) If the claim or the amount of the claim was not established at a fair hearing, the State agency must provide the household with a one-time notice of adverse action. The notice of adverse action may either be sent separately or as part of the demand letter.

(IV) THE INITIAL DEMAND LETTER OR NOTICE OF ADVERSE ACTION MUST INCLUDE LANGUAGE STATING:
(A) The amount of the claim.
(B) The intent to collect from all adults in the household when the overpayment occurred.
(C) The type (IPV, IHE, AE or similar language) and reason for the claim.
(D) The time period associated with the claim.
(E) How the claim was calculated.
(F) The phone number to call for more information about the claim.
(G) That, if the claim is not paid, it will be sent to other collection agencies, who will use various collection methods to collect the claim.
(H) The opportunity to inspect and copy records related to the claim.
(I) Unless the amount of the claim was established at a fair hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing.

(J) That, if not paid, the claim will be referred to the Federal government for federal collection action.
(K) That the household can make a written agreement to repay the amount of the claim prior to it being referred for Federal collection action.
(L) That, if the claim becomes delinquent, the household may be subject to additional processing charges.
(M) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim.
(N) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction.
(O) If allotment reduction is to be imposed, a due date or time frame to either repay or make arrangements to repay the claim in the event that the household stops receiving benefits.
(P) If allotment reduction is to be imposed, the percentage to be used and the effective date.

(v) The due date or time frame for repayment must be not later than 30 days after the date of the initial written notification or demand letter.

(vi) Subsequent demand letters or notices may be sent at the discretion of the State agency. The language to be used and content of these letters is left up to the State agency.

(4) *Repayment agreements.* (i) Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

(ii) The agreement must specify that the household will be subject to involuntary collection action(s) if payment is not received by the due date and the claim becomes delinquent.

(5) *Determining Delinquency.* (i) Unless specified in paragraph (e)(5)(iv) of this section, a claim must be considered delinquent if:

(A) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(B) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(ii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(A) of this section is the due date on the initial written notification/demand letter. The claim will remain delinquent until payment is received in full, a satisfactory payment agreement is negotiated, or allotment reduction is invoked.

(iii) The date of delinquency for a claim covered under paragraph (e)(5)(i)(B) of this section is the due date of the missed installment payment unless the claim was delinquent prior to entering into a repayment agreement, in which case the due date will be the due date on the initial notification/demand letter. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or if the State agency determines to either resume or re-negotiate the repayment schedule.

(iv) A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction and you, as a State agency, expect to begin collection on the claim once the prior claim(s) is settled.

(v) A claim is not subject to the requirements for delinquent debts if the State agency is unable to determine delinquency status because collection is coordinated through the court system.

(6) *Fair hearings and claims.* (i) A claim awaiting a fair hearing decision must not be considered delinquent.

(ii) If the hearing official determines that a claim does, in fact, exist against the household, the household must be re-notified of the claim. The language to be used in this notice is left up to

the State agency. The demand for payment may be combined with the notice of the hearing decision. Delinquency must be based on the due date of this subsequent notice and not on the initial pre-hearing demand letter sent to the household.

(iii) If the hearing official determines that a claim does not exist, the claim is disposed of in accordance with paragraph (e)(8) of this section.

(7) *Compromising claims*. (i) As a State agency, you may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years.

(ii) You may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(iii) You may reinstate any compromised portion of a claim if the claim becomes delinquent.

(8) *Terminating and writing-off claims*– (i) *A terminated claim* is a claim in which all collection action has ceased. A *written-off claim* is no longer considered a receivable subject to continued Federal and State agency collection and reporting requirements.

(ii) The following is our claim termination policy:

As a State agency, if . . .	Then you . . .	Unless . . .
(A) you find that the claim is invalid.	must discharge the claim and reflect the event as a balance adjustment rather than a termination.	it is appropriate to pursue the overpayment as a different type of claim (e.g., as an IHE rather than an IPV claim).
(B) all adult household members die.	must terminate and write-off the claim.	you plan to pursue the claim against the estate.
(C) the claim balance is $25 or less and the claim has been delinquent for 90 days or more.	must terminate and write-off the claim.	other claims exist against this household resulting in an aggregate claim total of greater than $25.
(D) you determine it is not cost effective to pursue the claim any further.	must terminate and write-off the claim.	we have not approved your overall cost-effectiveness criteria.
(E) the claim is delinquent for three years or more.	must terminate and write-off the claim.	you plan to continue to pursue the claim through Treasury's Offset Program.
(F) you cannot locate the household.	may terminate and write-off the claim.	
(G) a new collection method or a specific event (such as winning the lottery) substantially increases the likelihood of further collections.	may reinstate a terminated and written-off claim.	you decide not to pursue this option.

(f) *Acceptable forms of payment*.

You may collect a claim by:	However . . .
(1) Reducing benefits prior to issuance. This includes allotment reduction and offsets to restored benefits.	You must follow the instructions and limits found in paragraphs (g)(1) and (g)(3) of this section.
(2) Reducing benefits after issuance. These are benefits from electronic benefit transfer (EBT) accounts.	You must follow the instructions and limits found in paragraph (g)(2) of this section.

You may collect a claim by:	However . . .
(3) Accepting cash or any of its generally accepted equivalents. These equivalents include check, money order, and credit or debit cards.	You do not have to accept credit or debit cards if you do not have the capability to accept these payments.
(4) Accepting paper food coupons	You must destroy any coupons or coupon books that are not returned to inventory and document as appropriate.
(5) Conducting your own offsets and intercepts. This includes but is not limited to wage garnishments and intercepts of various State payments. These collections are considered ''cash'' for FNS claim accounting and reporting purposes.	You must follow any limits that may apply in paragraph (g) of this section.
(6) Requiring the household to perform public service.	This form of payment must be ordered by a court and specifically be in lieu of paying any claim.
(7) Participating in the Treasury collection programs.	You must follow the procedures found in paragraph (n) of this section.

(g) *Collection methods*—(1) *Allotment reduction*. The following is our allotment reduction policy:

As a State agency, you must . . .	Unless . . .
(i) Automatically collect payments for any claim by reducing the amount of monthly benefits that a household receives.	the claim is being collected at regular intervals at a higher amount or another household is already having its allotment reduced for the same claim (see paragraph (g)(1)(vi) of this section).
(ii) For an IPV claim, limit the amount reduced to the greater of $20 per month or 20 percent of the household's monthly allotment or entitlement.	the household agrees to a higher amount.
(iii) For an IHE or AE claim, limit the amount reduced to the greater of $10 per month or 10 percent of the household's monthly allotment.	the household agrees to a higher amount.
(iv) Not reduce the initial allotment when the household is first certified.	the household agrees to this reduction.
(v) Not use additional involuntary collection methods against individuals in a household that is already having its benefit reduced.	the additional payment is voluntary; or the source of the payment is irregular and unexpected such as a State tax refund or lottery winnings offset.
You may . . .	
(vi) Collect using allotment reduction from two separate households for the same claim. However, you are not required to perform this simultaneous reduction.	
(vii) Continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction.	

(2) *Benefits from EBT accounts.* (i) As a State agency, you must allow a household to pay its claim using benefits from its EBT benefit account.

(ii) You must comply with the following EBT benefit claims collection and adjustment requirements:

(A) For collecting from active (or reactivated) EBT benefits . . .		
You . . .	or . . .	and . . .
need written permission which may be obtained in advance and done in accordance with paragraph (g)(2)(iv) of this section;.	oral permission for one time reductions with you sending the household a receipt of the transaction within 10 days.	the retention rules do apply to this collection.
(B) For collecting from stale EBT benefits . . .		
You . . .	and . . .	and . . .
must mail or otherwise deliver to the household written notification that you intend to apply the benefits to the outstanding claim.	give the household at least 10 days to notify you that it doesn't want to use these benefits to pay the claim.	the retention rules apply to this collection.
(C) For making an adjustment with expunged EBT benefits . . .		
You . . .	and . . .	and . . .
must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account for which you become aware.	this can be done anytime	the retention rules do not apply to this adjustment.

(iii) A collection from an EBT account must be non-settling against the benefit drawdown account.

(iv) At a minimum, any written agreement with the household to collect a claim using active EBT benefits must include:

(A) A statement that this collection activity is strictly voluntary;

(B) The amount of the payment;

(C) The frequency of the payments (i.e., whether monthly or one time only);

(D) The length (if any) of the agreement; and

(E) A statement that the household may revoke this agreement at any time.

(3) *Offsets to restored benefits.* You must reduce any restored benefits owed to a household by the amount of any outstanding claim. This may be done at any time during the claim establishment and collection process.

(4) *Lump sum payments.* You must accept any payment for a claim whether it represents full or partial payment. The payment may be in any of the acceptable formats.

(5) *Installment payments.* (i) You may accept installment payments made for a claim as part of a negotiated repayment agreement.

(ii) As a household, if you fail to submit a payment in accordance with the terms of your negotiated repayment schedule, your claim becomes delinquent and it will be subject to additional collection actions.

(6) *Intercept of unemployment compensation benefits.* (i) As a State agency, you may arrange with a liable individual to intercept his or her unemployment compensation benefits for the collection of any claim. This collection option may be included as part of a repayment agreement.

(ii) You may also intercept an individual's unemployment compensation benefits by obtaining a court order.

(iii) You must report any intercept of unemployment compensation benefits as ''cash'' payments when they are reported to us.

(7) *Public service.* If authorized by a court, the value of a claim may be paid by the household performing public service. As a State agency, you will report these amounts in accordance with our instructions.

(8) *Other collection actions.* You may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection and/or other similar private and public sector agencies, state tax refund and lottery offsets, wage garnishments, property liens and small claims court.

(9) *Unspecified joint collections.* When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received in response to correspondence or a referral that contained both the food stamp and other program claim(s) and the debtor does not specify to which claim to apply the collection.

(h) *Refunds for overpaid claims.* (1) As a household, if you overpay a claim, the State agency must provide a refund for the overpaid amount as soon as possible after the State agency finds out about the overpayment. You will be paid by whatever method the State agency deems appropriate considering the circumstances.

(2) You are not entitled to a refund if the overpaid amount is attributed to an expunged EBT benefit.

(i) *Interstate claims collection.* (1) Unless a transfer occurs as outlined in paragraph (i)(2) of this section, as a State agency, you are responsible for initiating and continuing collection action on any food stamp recipient claim regardless of whether the household remains in your State.

(2) You may accept a claim from another State agency if the household with the claim moves into your State. Once you accept this responsibility, the claim is yours for future collection and reporting. You will report interstate transfers to us in accordance with our instructions.

(j) *Bankruptcy.* A State agency may act on our behalf in any bankruptcy proceeding against a bankrupt household with outstanding recipient claims.

(k) *Retention rates.* (1) The retention rates for State agencies are as follows:

If you collect an . . .	then the retention rate is . . .
(i) IPV claim	35 percent.
(ii) IHE claim	20 percent.
(iii) IHE claim by reducing a person's unemployment compensation benefit.	35 percent.
(iv) AE claim	nothing.

(2) These rates do not apply to:

(i) Any reduction in benefits when you disqualify someone for an IPV;

(ii) The value of court-ordered public service performed in lieu of the payment of a claim; or

(iii) Payments made to a court that are not subsequently forwarded as payment of an established claim.

(l) *Submission of payments to us.* A State agency must send us the value of funds collected for IHE, IPV or AE claims according to our instructions. We must pay you for claims collection retention by electronic funds transfer.

(m) *Accounting procedures.* (1) As a State agency, you must maintain an accounting system for monitoring recipient claims against households. This accounting system shall consist of both the system of records maintained for individual debtors and the accounts receivable summary data maintained for these debts.

(2) At a minimum, the accounting system must document the following for each claim:

(i) The date of discovery;

(ii) The reason for the claim;

(iii) The calculation of the claim;

(iv) The date you established the claim;

(v) The methods used to collect the claim;

(vi) The amount and incidence of any claim processing charges;

(vii) The reason for the final disposition of the claim;

(viii) Any collections made on the claim;

(ix) Any correspondence, including follow-up letters, sent to the household.

(3) At a minimum, your accounting or certification system must also identify the following for each claim:

(i) Those households whose claims have become delinquent;

(ii) Those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household; and

(iii) Those households with outstanding claims that are applying for benefits.

(4) When requested and at intervals determined by us, your accounting system must also produce:

(i) Accurate and supported outstanding balances and collections for established claims; and

(ii) Summary reports of the funds collected, the amount submitted to FNS, the claims established and terminated, any delinquent claims processing charges, the uncollected balance and the delinquency of the unpaid debt.

(5) On a quarterly basis, unless otherwise directed by us, your accounting system must reconcile summary balances reported to individual supporting records.

(n) *Treasury's Offset Programs (TOP)*—(1) *Referring debts to TOP*. (i) As a State agency, you must refer to TOP all recipient claims that are delinquent for 180 or more days.

(ii) You must certify that all of these claims to be referred to TOP are 180 days delinquent and legally enforceable.

(iii) You must refer these claims in accordance with our and the Department of the Treasury's (Treasury) instructions.

(iv) You must not refer claims to TOP that:

(A) You become aware that the debtor is a member of a participating household that is having its allotment reduced to collect the claim; or

(B) Fall into any other category designated by us as non-referable to TOP.

(2) *Notifying debtors of referral to TOP*. (i) As a State agency, you must notify the debtor of the impending referral to TOP according to our instructions relating to:

(A) What constitutes an adequate address to send the notice;

(B) What specific language will be included in the TOP referral notice;

(C) What will be the appropriate time frames and appeal rights; and

(D) Any other information that we determine necessary to fulfill all due process and other legal requirements as well as to adequately inform the debtor of the impending action.

(ii) You must also follow our instructions regarding procedures connected with responding to inquiries, subsequent reviews and hearings, and any other procedures determined by us as necessary in the debtor notification process.

(3) *Effect on debtors*. (i) If you, as a debtor, have your claim referred to TOP, any eligible Federal payment that you are owed may be intercepted through TOP.

(ii) You may also be responsible for paying any collection or processing fees charged by the Federal government to intercept your payment.

(4) *Procedures when a claim is in TOP*. (i) As a State agency, you must follow FNS and Treasury procedures when the claim is in TOP.

(ii) You must remove a claim from TOP if:

(A) FNS or Treasury instruct you to remove the debt; or

(B) You discover that:

(*1*) The debtor is a member of a food stamp household undergoing allotment reduction;

(*2*) The claim is paid up;

(*3*) The claim is disposed of through a hearing, termination, compromise or any other means;

(*4*) The claim was referred to TOP in error; or

(*5*) You make an arrangement with the debtor to resume payments.

(5) *Receiving and reporting*. As a State agency, you must follow our procedures on receiving and reporting TOP payments.

(6) *Security or confidentiality agreements*. As a State agency, you must follow our procedures regarding any security or confidentiality agreements or processes necessary for TOP participation.

[Amdt. 389, 65 FR 41775, July 6, 2000; 65 FR 47587, Aug. 2, 2000, as amended at 75 FR 78153, Dec. 15, 2010]

§ 273.19 [Reserved]

Subpart G—Program Alternatives

§ 273.20 SSI cash-out.

(a) *Ineligibility*. No individual who receives supplemental security income (SSI) benefits and/or State supplementary payments as a resident of California is eligible to receive food stamp benefits. The Secretary of the Department of Health and Human Services has determined that the SSI payments in California have been specifically increased to include the value of the food stamp allotment.

(b) *Receipt of SSI benefits*. In California, an individual must actually receive, not merely have applied for, SSI benefits to be determined ineligible for the food stamp program. If the State agency provides payments at least equal to the level of SSI benefits to individuals who have applied for but are awaiting an SSI eligibility determination, receipt of these substitute payments will terminate the individual's eligibility for food stamp benefits. Once SSI benefits are received, the individual will remain ineligible for food stamp benefits, even during months in which receipt of the SSI benefits is interrupted, or suspended, until the individual is terminated from the SSI program.

(c) *Income and resources*. In California, the income and resources of the SSI recipient living in a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33383, June 8, 1979. Redesignated at 45 FR 7217, Jan. 31, 1980, as amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994; Amdt. 364, 61 FR 54320, Oct. 17, 1996]

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) *System design*. This section provides for an MRRB system for determining household eligibility and benefits. For included households, this system replaces the prospective budgeting system provided in the preceding sections of this part. The MRRB system provides for the use of retrospective information in calculating household benefits, normally based on information submitted by the household in monthly reports. The State agency shall establish an MRRB system as follows:

(1) In establishing either a one-month or a two-month MRRB system, the State agency shall use the same system it uses in its TANF Program unless it has been granted a waiver by FNS. Differences between a one-month and a two-month system are described in paragraph (d) of this section.

(2) The State agency shall determine eligibility, either prospectively or retrospectively, on the same basis that it uses for its TANF program, unless it has been granted a waiver by FNS.

(3) *Budgeting waivers*. FNS may approve waivers of the budgeting requirements of this section to conform to budgeting procedures in the TANF program, except for households excluded from retrospective budgeting under paragraph (b) of this section.

(b) *Included and excluded households*. The establishment of either a monthly reporting or retrospective budgeting system is a State agency option. Certain households are specifically excluded from both monthly reporting and retrospective budgeting. A household that is included in a monthly reporting system must be retrospectively budgeted. Households not required to submit monthly reports may have their benefits determined on either a prospective or retrospective basis at

the State agency's option, unless specifically excluded from retrospective budgeting.

(1) The following households are excluded from both monthly reporting and retrospective budgeting:

(i) Migrant or seasonal farmworker households.

(ii) Households in which all members are homeless individuals.

(iii) Households with no earned income in which all adult members are elderly or disabled.

(2) Households residing on an Indian reservation where there was no monthly reporting system in operation on March 25, 1994 are excluded from monthly reporting.

(c) *Information on MRRB.* At the certification and recertification interview, the State agency shall provide the household with the following:

(1) An oral explanation of the purpose of MRRB;

(2) A copy of the monthly report and an explanation of how to complete and file it;

(3) An explanation that information required to be reported on the monthly report is the only reporting requirement for such information;

(4) An explanation of what the household shall verify when it submits a monthly report and how it will verify it;

(5) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

(6) Written explanations of this information.

(7) *Special assistance.* The State agency shall provide special assistance in completing and filing monthly reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required reports.

(d) *One and two-month systems.* Each State agency shall adopt either a one-month or two-month MRRB system. A one-month system shall have either one or two beginning months in the certification period and a two-month system shall have two beginning months. Except for beginning months in sequence as described in the preceding sentence, the State agency shall not consider as a beginning month any month which immediately follows a month in which a household is certified.

(1) *One-month system.* In the one-month system, the issuance month immediately follows its corresponding budget month.

(2) *Two-month system.* In the two-month system, the issuance month is the second month following its corresponding budget month. There are two beginning months of participation in this system, the first month and the following month.

(e) *Determining eligibility for households not certified under the beginning months' procedures of § 273.21(g).* The State agency shall determine eligibility consistent with paragraph (a)(2) of this section and in accordance with either of the following options.

(1) *Prospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility prospectively for each of the issuance months.

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month except for residency and compliance with the requirements regarding social security numbers. Compliance with work registration provisions shall be considered as of the issuance month or month of application. The 60-day time frame for determining the applicability of the voluntary quit provision of § 273.7(n) shall be measured by the State agency from the date of application.

(f) *Calculating allotments for households following the beginning months*—(1) *Household composition.* (i) If eligibility is determined retrospectively the State agency shall determine the household's composition as of the last day of the budget month.

(ii) If eligibility is determined prospectively (during the beginning months or for households processed under paragraph (e)(1) of this section), the State agency shall determine the household's composition as of the issuance month.

(iii) In a two-month system, the following provisions shall apply with regard to a household which reports, in the month between the budget month and the corresponding issuance month, that it has gained a new member.

(A) The State agency shall use the same household composition for determining the household's eligibility that it uses for calculating the household's benefit level.

(B) If the new member is not already certified to receive food stamps in another household participating within the State, the new member's income, deductible expenses, and resources from the issuance month shall be considered in determining the household's eligibility and benefit level. If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household, the State agency shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

(C) If the individual has moved out of one household receiving food stamps within the State and into another, with no break in participation, the State agency shall use the individual's income, deductible expenses, and resources from the budget month in determining benefits to be provided in the issuance month. The State agency shall include such an individual and the individual's income, deductible expenses, and resources in determining the issuance month eligibility and benefit level of either the household from which the individual has moved or the household into which the individual has moved, but not both. In determining the issuance month eligibility and benefit level of the household into which the individual has moved, the State agency shall disregard budget month income received by the new member from a terminated source.

(D) The State agency may add new members to the household effective either the month the household reports the gain of a new household member or the first day of the issuance month following the month the household reports the gain of a new member. The benefits shall not be prorated.

(iv) The State agency shall add a previously excluded member who was disqualified for an intentional program violation or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien retrospectively to the household the month after the disqualification period ends. All other previously excluded members shall be added in accordance with the procedures in paragraph (f)(1)(iii)(B) of this section, using the new member's issuance month income and expenses.

(2) *Income and deductions.* For the household members as determined in accordance with paragraph (f)(1) of this section, the State agency shall calculate the allotment using the household members' income and deductions from the budget month, except as follows:

(i) The State agency shall annualize self-employment income which is received other than monthly, in accordance with § 273.11(a). Such income shall be budgeted either prospectively or retrospectively and shall not affect more benefit months than the number of months in the period over which it is annualized or prorated. Except that, households which receive self-employment income from a farm operation monthly but incur irregular expenses to produce such self-employment farm income shall be given the option to annualize the self-employment farm income and expenses over a 12-month period.

(ii) The State agency shall prorate contract income received over a period of less than one year and either prospectively or retrospectively budget such income. Such income shall not effect more benefit months than the number of months in the period over which it is prorated.

(iii) Earned and unearned educational income shall be prorated over the period it is intended to cover in accordance with § 273.10(c)(3)(iii), and it shall be budgeted either prospectively or retrospectively. Such income shall not effect more benefit months than the number of months in the period over which it is prorated.

(iv) The State agency shall budget deductible expenses prorated over two or more months, except medical expenses, either prospectively or retrospectively, *provided* That such deductions are not budgeted over more months than they are intended to cover, and the total amount deducted does not exceed the total amount of the expenses. Medical expenses shall be budgeted prospectively. The State agency shall continue to allow deductions for expenses incurred even if billed on other than a monthly basis unless the household reports a change in the expense. The State agency may average the child support expense and budget it prospectively or retrospectively.

(v) The State agency shall budget income received on a recurring monthly or semimonthly basis for the month that it is intended to cover. The State agency shall not vary the budgeting of such income merely because it is received during another month as the result of changes in mailing cycles or pay dates, or because weekends or holidays result in an additional or missed payment.

(vi) The State agency may budget interest income using one of the following methods in paragraphs (f)(2)(vi)(A), (B), or (C) of this section. The State agency shall either establish categories of interest to be handled by each of the methods or shall offer each household the option of which method to budget the interest income.

(A) Actual interest income received in the budget month.

(B) Prorated interest income calculated by dividing the amount of interest anticipated during the certification period by the number of months in the certification period.

(C) An averaged amount adjusted for anticipated changes.

(vii) For a new household member described under paragraph (f)(1)(iii)(B) of this section, the State agency shall consider the new member's income and deductible expenses prospectively until the new member's first month living with the household becomes the budget month.

(viii) The options provided under paragraph (j)(1)(vii) of this section may affect the calculation of income and deductions.

(g) *Determining eligibility and allotments in the beginning months.* The State agency shall use the prospective budgeting procedures of this paragraph for determining the allotments and eligibility of households in the MRRB system during this first month, or first and second month of participation. The State agency shall not apply the procedures of this paragraph to the month(s) following the month of termination resulting from a temporary one-month change.

(1) *Determining eligibility during the beginning months.* The State agency shall determine eligibility prospectively in the beginning month(s).

(2) *Calculating allotments during the beginning months.* the State agency shall calculate allotments prospectively in the beginning month(s).

(3) *The first months of retrospective budgeting following the beginning months.* The State agency shall begin to base issuances to the household on retrospective budgeting during the first month for which the State's system can use the month of application as a budget month. In a one-month system, the first month for which the issuance is based on retrospective budgeting shall be the second month of participation. In a two-month system, the first month for which the issuance is based on retrospective budgeting shall be the third month of participation. If the State agency had been averaging income or converting weekly or biweekly income to a monthly amount in the beginning months, it may begin using the household's actual budget month income when the household becomes subject to retrospective budgeting. For purposes of this paragraph, any income received in either or both of the beginning months from a source which no longer provides income to the household (terminated income), which was included in the household's prospective budget, shall be disregarded when the beginning month becomes the budget month.

(h) *The monthly report form*—(1) *General.* (i) The State agency shall give the household a reasonable period of time after close of the budget month to submit the monthly reports.

(ii) The State agency shall require each household in the MRRB system to report on household circumstances on a monthly basis as a condition of continuing eligibility.

(iii) The State agency shall provide an individual or agency unit which a household may contact to receive prompt answers about the completion of the form. A telephone number (toll free for households outside the local calling area) which a household may use to obtain further information shall also be available.

(iv) The State agency shall ensure that households are informed about the availability and amount of the standard utility allowances, if the State agency offers them.

(2) *Monthly report form.* The State agency's monthly report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(b) of this chapter;

(iii) Specify the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which the household must submit with the form, in accordance with § 273.21(i);

(v) Identify the individual or agency unit available to assist in completing the form:

(vi) Include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits, including reduction and termination;

(vii) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud.

(viii) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (SSN's) (including the statutory citation, the title of the statute, and the fact that providing SSN's is mandatory), the purpose of requiring SSN's, the routine uses for SSN's, and the effect of not providing SSN's. This statement may be on the form itself or included as an attachment to the form.

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form except that the State agency shall not require households to monthly report medical expenses. Medical expenses may be reported in accordance with § 273.10(d)(4).

(4) *Combined form.* If the State agency uses a combined monthly report for food stamps and TANF, the State agency shall clearly indicate on the form that non-TANF food stamp households need not provide TANF-only information.

(i) *Verification.* Each month the household shall verify information for those items designated by the State agency. The State agency may designate that verification be submitted for any item that has changed or appears questionable. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) before acting on it if the change would increase the household's allotment. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8)(i) shall be obtained prior to the household's recertification.

(j) *State agency action on reports*—(1) *Processing.* Upon receiving a monthly report, the State agency shall:

(i) Review the report to ensure accuracy and completeness.

(ii) Consider the report incomplete only if:

(A) It is not signed by the head of the household, an authorized representative or a responsible member of the household;

(B) It is not accompanied by verification required by the State agency on the monthly report;

(C) It omits information required by the State agency on the monthly report necessary either to determine the household's eligibility or to compute the household's level of food stamp benefits.

(iii) Determine those items which will require additional verification, in accordance with paragraph (i) of this section.

(iv) Contact the household directly, and take action as needed, to obtain further information on specific items. These items include:

(A) The effect of a reported change in resources on a household's total resources; and

(B) The effect of a reported change in household composition or loss of a job or source of earned income on the applicability of the work registration requirement.

(v) Notify the household, in accordance with paragraph (j)(3)(ii) of this section, of the need to submit a report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(vi) Determine the household's eligibility by considering all factors, including income, in accordance with paragraphs (e) or (g) of this section.

(vii) Determine the household's level of benefits in accordance with § 273.10(e) based on the household composition determined in accordance with paragraph (f)(1) of this section. For those household members the following (except as provided in paragraph (f)(2) of this section) income and deductions shall be considered:

(A) Earned and unearned income received in the corresponding budget month, including income that has been averaged in accordance with paragraph (f) of this section. The earned income of an elementary or secondary school student excluded in accordance with § 273.9(c)(7) shall be excluded until the budget month following the budget month in which the student turns 18. The State agency has the option of converting to a regular monthly amount the income that a household receives weekly or biweekly. If the State agency elects to convert weekly or biweekly income for MRRB households, it shall do so for all households in its MRRB caseload. The State agency may convert or average income in the beginning months and use actual earned or unearned income received in the budget month following the beginning months of participation.

(B) The PA grant paid in the corresponding budget month or the PA grant to be paid in the issuance month. If the State agency elects to use the PA grant to be paid in the issuance month, the State agency shall ensure that:

(*1*) Any additional or corrective payments are counted, either prospectively or retrospectively; and

(*2*) the State agency shall disregard income received in the budget month from a terminated source which results in an increase in the PA grant, provided the household has reported the termination of the income either in the monthly report for the budget month or in some other manner which, as determined by the State agency, allows the State agency sufficient time to process the change and affect the allotment in the issuance month.

A State agency which elects to use the PA grant to be paid in the issuance month shall implement mass changes in accordance with the procedures at § 273.12(e)(2).

(C) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average.

(viii) Issue benefits in accordance with part 274 of this chapter and on the time schedule set forth in paragraph (k) of this section.

(ix) Provide specific information on how the State agency calculated the benefit level if it has changed since the preceding month, either with the issuance or in a separate notification.

(2) *Notices*. (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2.

(ii) The State agency shall notify a household of any change from its prior benefit level and the basis for its determination. If the State agency reduces, suspends or terminates benefits, it shall send the notice so the household receives it no later than either the date the resulting benefits are to be received or in place of the benefits.

(iii) The State agency shall notify a household, in accordance with paragraph (j)(3)(iii), if its monthly report is late or incomplete, or further information is needed.

(3) *Incomplete filing.* (i) If a household fails to file a monthly report, or files an incomplete report, by the specified filing date, the State agency shall give the household at least ten more days, from the date the State agency mails the notice to file a complete monthly report.

(ii) The State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing and the lack of that verification will adversely affect the household's allotment;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report.

(iii) When a State agency requires verification for the item listed and the household does not provide the verification, the State agency shall take the following actions:

(A) If the household does not verify earned income, the State agency shall regard the household's report as incomplete, take action in accordance with paragraphs (j)(3)(i) and (j)(3)(ii) of this section and, if appropriate, terminate the household in accordance with paragraph (m) of this section.

(B) If the household is using its actual utility costs to establish its shelter cost deduction in accordance with § 273.9(d) and it does not verify a change in its actual utility expenses, the State agency shall not allow a deduction for such costs.

(C) If a household fails to verify a change in reported medical expenses in accordance with § 273.2(f)(8), and that change would increase the household's allotment, the State agency shall not make the change. The State agency shall act on reported changes without requiring verification if the changes would decrease the household's allotment, or make the household ineligible.

(D) If the household does not verify other items for which verification is required, the State agency shall:

(*1*) Act on the reported change if it would decrease benefits.

(*2*) Not act on the reported change if it would increase benefits.

(E) If the household does not report or verify changes in child support, the State agency shall not allow a child support deduction.

(k) *Issuance of benefits*—(1) *Timely issuance.* (i) For an eligible household which has filed a complete monthly report by the scheduled filing date, the State agency shall provide an opportunity to participate within the month following the budget month in a one-month system, or within the second month following the budget month in a two-month system.

(ii) The State agency shall provide each household with an issuance cycle so that the household receives its benefits at about the same time each month and has an opportunity to participate before the end of each issuance month.

(2) *Delayed issuance.* (i) If an eligible household files a complete monthly report during its extension period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date.

(ii) If an eligible household which has been terminated for failure to file a complete report files a complete report after its extended filing date, but before the end of the issuance month, the State agency may choose to reinstate the household by providing it with an opportunity to participate. If the household has requested a fair hearing on the basis that a complete monthly report was filed, the State agency shall reinstate the household if a completed monthly report is filed before the end of the issuance month.

(iii) If an eligible household files a complete report after the issuance month, the State agency shall not provide the household with an opportunity to participate for that month.

(l) *Other reporting requirements*—(1) *Information reported on the monthly report.* The monthly report shall be the sole reporting requirement for information required to be included in the monthly

report. Changes in household circumstances not subject to monthly reporting shall be reported in accordance with § 273.12.

(2) *Households excluded from monthly reporting*. Households which are excluded from monthly reporting shall report changes in accordance with § 273.12.

(m) *Termination*. (1) The State agency shall terminate a household's food stamp participation if the household:

(i) Is ineligible for food stamps, unless suspended in accordance with paragraph (n) of this section:

(ii) Fails to file a complete report by the extended filing date; or

(iii) Fails to comply with a nonfinancial eligibility requirement, such as registering for employment.

(2) The State agency shall issue a notice to the household which:

(i) Complies with the requirements of § 271.2 for adequate notice;

(ii) Informs the household of the reason for its termination;

(iii) If the State agency allows reinstatement under paragraph (k)(2)(ii), explains how the household may be reinstated;

(iv) Informs the household of its rights to request a fair hearing and to receive continued benefits. If termination is for failure to submit a monthly report and the household states that a monthly report has been filed, the notice must advise the household that a completed monthly report must be filed prior to the end of the issuance month as a condition for continued receipt of benefits.

(3) The State agency shall issue the notice to the household so that it receives the notice no later than the household's normal or extended issuance date.

(n) *Suspension*. The State agency may suspend a household's issuance in accordance with this paragraph. If the State agency does not choose this option, it shall instead terminate households in accordance with paragraph (m) of this section.

(1) The State agency may suspend a household's issuance for one month if the household becomes temporarily ineligible due to a periodic increase in recurring income or other change not expected to continue in the subsequent month. The State agency may on a Statewide basis either suspend the household's certification prospectively for the issuance month or retrospectively for the issuance month corresponding to the budget month in which the noncontinuing circumstance occurs.

(2) The State agency shall continue to supply monthly reports to the household for one month.

(3) If the suspended household again becomes eligible, the State agency shall issue benefits on the household's normal issuance date.

(4) If the suspended household does not become eligible after one month, the State agency shall terminate the household.

(o) If a household has been terminated or suspended based on an anticipated change in circumstances, the State agency shall not count any noncontinuing circumstances which caused the prospective ineligibility when calculating the household's benefits retrospectively in a subsequent month.

(p) *Fair hearings*—(1) *Entitlement*. All households participating in a MRRB system shall be entitled to fair hearings in accordance with § 273.15.

(2) *Continuation of benefits*. (i) Any household which requests a fair hearing and does not waive continuation of benefits, and is otherwise eligible for continuation of benefits, shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first. If the State agency did not receive a monthly report from the household by the extended filing date and the household states that a monthly report was submitted, the household is entitled to continued benefits, *provided* That a completed report is submitted no later than the last day of the issuance month.

(ii) The State agency shall provide continued benefits no later than five working days from the day it receives the household's request.

(iii) A household whose benefits have been continued shall file montly reports until the end of the certification period. If the fair hearing is with regard to termination for nonreceipt of the monthly report by the State agency, a completed monthly report for the

month in question shall be submitted by the household no later than the last day of the issuance month.

(iv) During the fair hearing period the State agency shall adjust allotments to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(q) *Recertification*—(1) *Timeliness.* The State agency shall recertify an eligible household which timely reapplies and provides it with an opportunity to participate in the household's normal issuance cycle.

(2) *Retrospective Recertification.* (i) The State agency shall recertify the household using retrospective information to determine the household's benefit level for the first month of the new certification period.

(ii) If the State agency is operating a two-month MRRB system, the State agency may delay reflecting information from the recertification interview in the household's eligibility and benefit level until the second month of the new certification period.

(iii) The State agency shall recertify households according to one of the three options set forth in paragraphs (q) (3), (4), or (5) of this section.

(3) *Option One: Recertification form.* (i) The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(ii) The State agency shall mail the form to the household, along with a notice of expiration, in place of the monthly report form. The State agency shall either: Mail the recertification form along with the notice of expiration; use a recertification form which contains a notice of expiration; or mail the recertification form and the notice of expiration separately, as long as the forms are mailed at the same time.

(iii) The household shall submit the form to the State agency in accordance with paragraph (h)(1)(i) of this section.

(4) *Option Two: Monthly report and addendum.* (i) The State agency shall provide each household with a notice of expiration and monthly report form and an addendum to obtain all additional information necessary for recertification.

(ii) The State agency shall either: Mail the monthly report form along with the notice of expiration; use a monthly report form which contains a notice of expiration; or mail the monthly report form and the notice of expiration separately, as long as the forms are mailed at the same time.

(iii) The household shall submit the monthly report to the State agency in accordance with paragraph (h)(1)(i) of this section.

(iv) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(v) The household shall submit the addendum to the State agency no later than the time of the interview.

(5) *Option Three: Signed Statement.* (i) The State agency shall recertify households based on the monthly report and the interview.

(ii) At the interview, the State agency shall obtain all of the information not provided in the monthly report which is necessary for recertification.

(iii) The State agency shall ensure that it has on file a statement signed by the appropriate household member that the household has applied for recertification.

(6) *Interview.* (1) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency shall schedule the interview at any time during the last month of the old certification period.

(iii) If the State agency schedules the interview for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report to the interview.

(r) *Procedures for households that change their reporting and budgeting status.* The State agency shall use one of the following procedures for households subject to change in reporting/budgeting status.

(1) *Households which become subject to MRRB.* The State agency may change the reporting/budgeting status of

households which become subject to monthly reporting at any time following the change in household circumstances which results in the change in the household's reporting/budgeting status, subject to the following conditions:

(i) The State agency shall provide the household with information provided to MRRB households under paragraph (c) of this section. If the State agency elects to implement the change during the certification period, it may omit the oral explanation of MRRB required under paragraph (c)(1).

(ii) The State agency shall not require the household to submit a monthly report during any month in which the household was subject to the change reporting requirements of § 273.12.

(2) *Households which are no longer subject to MRRB.* The agency shall use one of the following procedures to remove households from the MRRB system.

(i) *Procedures for households exempt from MRRB.* For any household which becomes exempt from MRRB under paragraph (b) of this section, the State agency shall notify the household within 10 days of the date the State agency becomes aware of the change that the household has become exempt from monthly reporting and is no longer required to file any future monthly reports and has also become exempt from retrospective budgeting and when the change in budgeting will go into effect. The State agency shall begin determining the household's benefits prospectively no later than the first issuance month for which a household has not submitted a monthly report for the budget month.

(ii) *Other households moving from MRRB to change reporting and prospective budgeting.* When a household is no longer subject to MRRB under a State agency's system, the State agency may begin determining the household's benefits prospectively in any month following the month the State agency becomes aware of the changed circumstances which necessitate the need to change the household's reporting/budgeting status. If the State agency elects to change the household's reporting/budgeting status prior recertification it shall provide the household with a notice explaining the change in the month prior to the month the change is effective. If the State agency elects to change the household's status at recertification it shall advise the household at the recertification interview that its reporting/budgeting status is being changed.

(iii) *Households moving from MRRB to retrospective budgeting and change reporting.* If a household's status necessitates changing it from a monthly reporter to a change reporter while continuing to be budgeted retrospectively, the State agency may change the household's status at any time. If the State agency elects to change the household immediately, the State agency shall provide the household with a notice that it is no longer subject to monthly reporting. The notice shall include information about the household's reporting requirements under § 273.12.

(s) *Implementation of Regulatory Changes.* The State agency shall implement changes in regulatory provisions for households subject to MRRB prospectively based on the effective date and implementation time frame published in the FEDERAL REGISTER. Rules are effective as of the same date for all households regardless of the budgeting system.

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) *Definition of a reservation.* For purposes of this section, the term ''reservation'' shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The term ''tribal organization'' shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Benefit determination for missing reports.* The State agency shall not delay, reduce, or suspend the allotment of a household that fails to submit a report by the issuance date.

(3) *Reinstatement.* If a household is terminated for failing to submit a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(4) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report by the specified filing date, the State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(5) *Supplements and claims.* If the household submits the missing monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement, if warranted. If the household submits the missing monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

[48 FR 54965, Dec. 8, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

§ 273.22 [Reserved]

§ 273.23 Simplified application and standardized benefit projects.

(a) *General.* This subpart establishes rules under which Simplified Application and Standardized Benefit Projects shall operate. State agencies and political subdivisions chosen as project operators may designate households containing members receiving TANF, SSI, or Medicaid benefits as project eligible. Project eligible households shall have their food stamp eligibility determined using simplified application procedures. Food stamp eligibility shall be determined using information contained in their TANF, or Medicaid application, or, in the case of SSI, on the State Data Exchange (SDX) tape, and any appropriate addendum. Project-eligible households shall be considered categorically food stamp resource eligible based on their eligibility for these other programs and shall be required to meet food stamp income eligibility standards. However, income definitions appropriate to the TANF, SSI or Medicaid programs shall be used instead of food stamp income definitions in determining eligibility. In addition, such households shall, as a condition of program eligibility, meet and/or fulfill all food stamp nonfinancial eligibility requirements. (Project-eligible households defined as categorically eligible in § 273.2 (j) and (k) of these regulations are not required to meet the income eligibility standards.) To

further simplify program administration, benefits provided to such households may be standardized by category of assistance and household size.

(b) *Program administration.* (1) Simplified application and standardized benefit procedures are applicable in five States and five political subdivisions. For the purpose of this section, a political subdivision is a project area as defined in § 271.2 of these regulations.

(2) State agencies and political subdivisions seeking to operate a Simplified Application and Standardized Benefit Project shall submit Work Plans to FNS in accordance with the requirements of this section.

(3) FNS shall evaluate Work Plans according to the criteria set forth in the Simplified Application/Standardized Benefit Notice of Intent.

(4) Political subdivisions shall submit their Work Plans to FNS through their respective State agencies for review and approval.

(5) A State agency selected by FNS to operate a Simplified Application and Standardized Benefit Project shall include the Work Plan in its State Plan of Operations. A political subdivision chosen to operate a Simplified Application and Standardized Benefit Project shall assure that the responsible State agency include that political subdivision's project Work Plan in its own State Plan of Operations. The Work Plan shall be updated, as needed, to reflect changes in the benefit methodology, subject to prior FNS approval.

(c) *Contents of the work plan.* The Work Plan submitted by each applicant shall contain the following information:

(1) Background information on the proposed site's characteristics, current operating procedures, and a general description of the proposed procedures;

(2) A description of the proposed project design, including the benefit methodology, households which will be project eligible, operational procedures, and the need for waivers;

(3) An implementation and monitoring plan describing tasks, staffing and a timetable for implementation;

(4) An estimate of project impacts including implementation costs and, on an annual basis, operating costs, administrative costs, error reduction, and benefit changes; and

(5) A statement signed by the State official with authority to commit the State or political subdivisions to the project's operation.

(d) *Project-eligible households.* Each operating agency shall decide which of the following categories of household shall be eligible to participate in the project.

(1) Households all of whose members receive TANF benefits under part A of title IV of the Social Security Act;

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act;

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act;

(4) Households each of whose members receive one or more of the following: TANF, SSI, or Medicaid benefits (multiple-benefit households); and

(5) Households only some of whose members receive TANF, SSI, and/or Medicaid benefits (mixed households).

(e) *Determining Food Stamp Program eligibility.* Under the Simplified Application and Standardized Benefit Project, project eligible households shall have their food stamp eligibility determined using the following criteria.

(1) Certain households, at the operating agency's option, which contain members receiving TANF, SSI, or Medicaid benefits, shall be designated project eligible and need not make separate application for food stamp benefits. Once such households indicate in writing a desire to receive food stamps, their eligibility will be determined based on information contained in their application for TANF or Medicaid benefits or, in the case of SSI, on the State Data Exchange (SDX) tape. TANF or Medicaid applications may need to be modified, or be subject to an addendum in order to accommodate any additional information required by the operating agency.

(2) The income definitions and resource requirements prescribed under § 273.9 (b) and (c) and § 273.8 are inapplicable to project-eligible households. Project-eligible households which have met the resource requirements of the TANF, SSI, and/or Medicaid programs

shall be considered to have satisfied the food stamp resource requirements. Gross income less any allowed exclusions, as defined by the appropriate categorical aid program, shall be used to determine food stamp income eligibility (unless the project household is categorically income eligible as defined in § 273.2 (j) and (k)) and benefit levels. Deemed income, as defined under TANF, SSI or Medicaid rules, shall be excluded to the extent that households with such income are part of the food stamp household providing the deemed income.

(3) Project-eligible households which are not categorically income eligible shall meet the gross and net income standards prescribed in § 273.9(a). Net income shall be determined by subtracting from gross income either actual or standardized deduction amounts. If standardized deduction amounts are used, they may be initially determined using recent historical data on deductions claimed by such households. Such deductions must be updated, as necessary, on at least an annual basis. Such deductions shall include:

(i) The current standard deduction for all households;

(ii) An excess shelter deduction and a dependent care deduction for households not containing an elderly or disabled member;

(iii) A dependent care deduction, an uncapped excess shelter deduction and a medical deduction for households containing a qualified elderly or disabled member; and

(iv) A standardized or actual earned income deduction for households containing members with earned income.

(4) All non-financial food stamp eligibility requirements shall be applicable to project-eligible households.

(f) *Benefit levels.* (1) In establishing benefits for project eligible households, either the appropriate State standard of need (maximum aid payment) or gross income as determined for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any, may be used as the gross income amount. If mixed households are designated project eligible, procedures shall be developed to include as household income the income of those household members not receiving categorical aid.

(2) If allotments are standardized, the average allotment for each category of household, by household size, shall be no less than average allotments would have been were the project not in operation.

(3) Benefit methodologies shall be constructed to ensure that benefits received by households having higher than average allotments under normal program rules are not significantly reduced as a result of standardization.

(4) Benefit methodologies shall be structured to ensure that decreases in household benefits are not reduced by more than $10 or 20%, whichever is less.

(5) The methodology to be used in developing benefit levels shall be determined by the operating agency but shall be subject to FNS approval.

(6) With FNS approval, operating agencies may develop an alternate methodology for standardizing allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or allotments impractical.

(7) FNS may require operating agencies to revise their standardized allotments during the course of the project to reflect changes in items such as household characteristics, the Thrifty Food Plan, deduction amounts, the benefit reduction rate, or benefit levels in TANF or SSI. Such changes will be documented by revising the Work Plan amendment to the State Plan of Operations.

(g) *Household notification.* All certified project-eligible households residing in the selected project sites shall be provided with a notice, prior to project commencement, informing them of the revised procedures and household requirements under the project. If household allotments are to be standardized, the notice shall also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. The notice shall meet the requirements of a notice of adverse action as set forth in § 273.13(a)(2).

(h) *Application processing procedures.* (1) The operating agency shall allow project-eligible households to indicate

in writing their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their TANF, SSI, or Medicaid application will be the basis of their food stamp eligibility determination. If mixed households are included in the project-eligible universe, the project operator shall develop a procedure to collect the necessary information on household members not receiving categorical aid.

(2) The operating agency may use simplified application and standardized benefit procedures only for those households containing at least one member certified to receive either TANF, SSI, or Medicaid benefits. If simplified procedures are to be used, the State agency shall make all eligibility determinations for households jointly applying for food stamps and TANF, SSI, or Medicaid benefits within the 30-day food stamp processing period. If a household's eligibility for TANF, SSI, or Medicaid cannot be established within the 30-day period, normal food stamp application, certification, and benefit determination procedures shall be used and benefits shall be issued within 30 days if the household is eligible. Households which are jointly applying for TANF, SSI, or Medicaid, and which qualify for expedited service, shall be certified for food stamps using procedures prescribed at § 273.2(i). However, if the State agency can process the application of an expedited service household for categorical assistance within the expedited period prescribed at § 273.2(i), it may use simplified application and standardized benefit procedures to certify the household for food stamp benefits.

(i) *Regulatory requirements.* (1) All Food Stamp Program regulations shall remain in effect unless they are expressly altered by the provisions of this section or the provisions contained within the approved SA/SB Work Plan.

(2) *Certification periods for mixed households.* At the option of the operating agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household shall be required to complete a modified application and provide additional information in accordance with § 273.2(f). If the household fails to comply with the interview review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with § 273.13, Notice of Adverse Action.

(j) *Quality control.* (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures, based on project requirements, which have been developed by the State agency and approved by FNS.

(2) The error rate(s) determined using the special quality control review procedures shall be included when determining the State agency's overall error rate.

(k) *Funding.* Operating agencies shall be reimbursed for project costs at the rates prescribed in § 277.4.

(l) *Evaluation.* Each project site shall conduct a self-evaluation of the project's impact on benefits, administrative costs and participation. Such evaluation shall be conducted within three months of project implementation. The results of the self-evaluation shall be sent to FNS within six months of project implementation. The impact of the project on project-eligible households' error rates shall be reported on an annual basis in accordance with § 273.23(m).

(m) *Reporting requirements.* Operating agencies shall be required to prepare and submit to FNS an annual report on the error rate attributable to project-eligible households. The timing of such reports shall coincide with the due date for the annual quality control report prescribed in § 275.21(d).

(n) *State agency monitoring.* Monitoring shall be undertaken to ensure compliance with these regulations and the Work Plan submitted to and approved by FNS. Project monitoring shall be conducted in accordance with the appropriate sections of part 275, Performance Reporting System, of

these regulations. At a minimum, on-site reviews of the Simplified Application and Standardized Benefit Project shall be conducted once within six months of the project's implementation and then in accordance with the Management Evaluation review schedule for the project area.

(o) *Termination.* (1) FNS may terminate project operations for any reason and at any time on 60 days written notice to the administering State agency or political subdivision. State or local agencies may also choose to terminate their participation with 60 days written notice to FNS. In either such event, operating agencies shall be given sufficient time to return to normal operations in an orderly fashion.

(2) If termination occurs, FNS may select another site for project operations. Such selection shall be based on either previously received project proposals or proposals received under a new solicitation.

[53 FR 26224, July 12, 1988]

§ 273.24 Time limit for able-bodied adults.

(a) *Definitions.* For purposes of the food stamp time limit, the terms below have the following meanings:

(1) *Fulfilling the work requirement* means:

(i) Working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours a week averaged monthly means 80 hours a month;

(ii) Participating in and complying with the requirements of a work program 20 hours per week, as determined by the State agency;

(iii) Any combination of working and participating in a work program for a total of 20 hours per week, as determined by the State agency; or

(iv) Participating in and complying with a workfare program;

(2) *Working* means:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services (''in kind'' work); or

(iii) Unpaid work, verified under standards established by the State agency.

(iv) Any combination of paragraphs (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) of this section.

(3) *Work Program* means:

(i) A program under the Workforce Investment Act (Pub. L. 105–220);

(ii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iii) An employment and training program, other than a job search or job search training program, operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under § 273.7(f). Such a program may contain job search or job search training as a subsidiary component as long as such component is less than half the requirement.

(4) *Workfare program* means:

(i) A program under § 273.7(m); or

(ii) A comparable program established by a State or political subdivision of a State.

(b) *General Rule.* Individuals are not eligible to participate in the Food Stamp Program as a member of any household if the individual received food stamps for more than three countable months during any three-year period, except that individuals may be eligible for up to three additional countable months in accordance with paragraph (e) of this section.

(1) *Countable months.* Countable months are months during which an individual receives food stamps for the full benefit month while not:

(i) Exempt under paragraph (c) of this section;

(ii) Covered by a waiver under paragraph (f) of this section;

(iii) Fulfilling the work requirement as defined in paragraph (a)(1) of this section; or

(iv) Receiving benefits that are prorated in accordance with § 273.10.

(2) *Good cause.* As determined by the State agency, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work is temporary and the individual retains his or her job. Good cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

(3) *Measuring the three-year period.* The State agency may measure and track the three-year period as it deems appropriate. The State agency may use either a ''fixed'' or ''rolling'' clock. If the State agency chooses to switch tracking methods it must inform FNS in writing. With respect to a State, the three-year period:

(i) Shall be measured and tracked consistently so that individuals who are similarly situated are treated the same; and

(ii) Shall not include any period before the earlier of November 22, 1996, or the date the State notified food stamp recipients of the application of Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

(4) *Treatment of income and resources.* The income and resources of an individual made ineligible under this paragraph (b) shall be handled in accordance with § 273.11(c)(2).

(5) *Benefits received erroneously.* If an individual subject to this section receives food stamp benefits erroneously, the State agency shall consider the benefits to have been received for purposes of this provision unless or until the individual pays it back in full.

(6) *Verification.* Verification shall be in accordance with § 273.2(f)(1) and (f)(8).

(7) *Reporting.* A change in work hours below 20 hours per week, averaged monthly, is a reportable change in accordance with § 273.12(a)(1)(viii). Regardless of the type of reporting system the State agency assigns to potential ABAWDs, the State agency must adhere to the statutory requirements of time-limited benefits for individuals who are subject to the work requirement. The State agency may opt to consider work performed in a job that was not reported according to the requirements of § 273.12 ''work.''

(c) *Exceptions.* The time limit does not apply to an individual if he or she is:

(1) Under 18 or 50 years of age or older;

(2) Determined by the State agency to be medically certified as physically or mentally unfit for employment. An individual is medically certified as physically or mentally unfit for employment if he or she:

(i) Is receiving temporary or permanent disability benefits issued by governmental or private sources;

(ii) Is obviously mentally or physically unfit for employment as determined by the State agency; or

(iii) If the unfitness is not obvious, provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel the State agency determines appropriate, that he or she is physically or mentally unfit for employment.

(3) Is a parent (natural, adoptive, or step) of a household member under age 18, even if the household member who is under 18 is not himself eligible for food stamps;

(4) Is residing in a household where a household member is under age 18, even if the household member who is under 18 is not himself eligible for food stamps;

(5) Is otherwise exempt from work requirements under section 6(d)(2) of the Food Stamp Act, as implemented in regulations at § 273.7(b); or

(6) Is pregnant.

(d) *Regaining eligibility.* (1) An individual denied eligibility under paragraph (b) of this section, or who did not reapply for benefits because he was not meeting the work requirements under paragraph (b) of this section, shall regain eligibility to participate in the Food Stamp Program if, as determined by the State agency, during any 30 consecutive days, he or she:

(i) Worked 80 or more hours;

(ii) Participated in and complied with the requirements of a work program for 80 or more hours;

(iii) Any combination of work and participation in a work program for a total of 80 hours; or participated in and complied with a workfare program; or

(iv) At State agency option, verifies that the he or she will meet one of the requirements in paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), or (d)(1)(v) of this section, within the 30 days subsequent to application; or

(v) Becomes exempt.

(2) An individual regaining eligibility under paragraph (d)(1) of this section shall have benefits calculated as follows:

(i) For individuals regaining eligibility by working, participating in a work program, or combining hours worked and hours participating in a work program, the State agency may either prorate benefits from the day the 80 hours are completed or from the date of application, or

(ii) For individuals regaining eligibility by participating in a workfare program, and the workfare obligation is based on an estimated monthly allotment prorated back to the date of application, then the allotment issued must be prorated back to this date.

(3) There is no limit on how many times an individual may regain eligibility and subsequently maintain eligibility by meeting the work requirement.

(e) *Additional three-month eligibility.* An individual who regained eligibility under paragraph (d) of this section and who is no longer fulfilling the work requirement as defined in paragraph (a) of this section is eligible for a period of three consecutive countable months (as defined in paragraph (b) of this section), starting on the date the individual first notifies the State agency that he or she is no longer fulfilling the work requirement, unless the individual has been satisfying the work requirement by participating in a work or workfare program, in which case the period starts on the date the State agency notifies the individual that he or she is no longer meeting the work requirement. An individual shall not receive benefits under this paragraph (e) more than once in any three-year period.

(f) *Waivers*—(1) *General.* On the request of a State agency, FNS may waive the time limit for a group of individuals in the State if we determine that the area in which the individuals reside:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Required data.* The State agency may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, States must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. A nonexhaustive list of the kinds of data a State agency may submit follows:

(i) To support a claim of unemployment over 10 percent, a State agency may submit evidence that an area has a recent 12 month average unemployment rate over 10 percent; a recent three month average unemployment rate over 10 percent; or an historical seasonal unemployment rate over 10 percent; or

(ii) To support a claim of lack of sufficient jobs, a State may submit evidence that an area: is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (ETA); is determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; has a low and declining employment-to-population ratio; has a lack of jobs in declining occupations or industries; is described in an academic study or other publications as an area where there are lack of jobs; has a 24-month average unemployment rate 20 percent above the national average for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period the ETA uses to designate LSAs for the current fiscal year.

(3) *Waivers that are readily approvable.* FNS will approve State agency waivers where FNS confirms:

(i) Data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent;

(ii) Evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year; or

(iii) Data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20 percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year.

(4) *Effective date of certain waivers.* In areas for which the State certifies that

data from the BLS or the BLS cooperating agency show a most recent 12 month average unemployment rate over 10 percent; or the area has been designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(5) *Duration of waiver*. In general, waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State agency must show that the basis for the waiver is not a seasonal or short term aberration. We reserve the right to approve waivers for a shorter period at the State agency's request or if the data is insufficient. We reserve the right to approve a waiver for a longer period if the reasons are compelling.

(6) *Areas covered by waivers*. States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

(g) *15 percent exemptions*. (1) For the purpose of establishing the 15 percent exemption for each State agency, the following terms are defined:

(i) *Caseload* means the average monthly number of individuals receiving food stamps during the 12-month period ending the preceding June 30.

(ii) *Covered individual* means a food stamp recipient, or an applicant denied eligibility for benefits solely because he or she received food stamps during the 3 months of eligibility provided under paragraph (b) of this section, who:

(A) Is not exempt from the time limit under paragraph (c) of this section;

(B) Does not reside in an area covered by a waiver granted under paragraph (f) of this section;

(C) Is not fulfilling the work requirements as defined in paragraph (a)(1) of this section; and

(D) Is not receiving food stamp benefits under paragraph (e) of this section.

(2) Subject to paragraphs (h) and (i) of this section, a State agency may provide an exemption from the 3-month time limit of paragraph (b) of this section for covered individuals. Exemptions do not count towards a State agency's allocation if they are provided to an individual who is otherwise exempt from the time limit during that month.

(3) For each fiscal year, a State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State, as estimated by FNS, based on FY 1996 quality control data and other factors FNS deems appropriate, and adjusted by FNS to reflect changes in:

(i) The State agency's caseload; and

(ii) FNS's estimate of changes in the proportion of food stamp recipients covered by waivers granted under paragraph (f) of this section.

(4) State agencies must not discriminate against any covered individual for reasons of age, race, color, sex, disability, religious creed, national origin, or political beliefs. Such discrimination is prohibited by this part, the Food Stamp Act, the Age Discrimination Act of 1975 (Public Law 94–135), the Rehabilitation Act of 1973 (Public Law 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints will be processed in accord with 7 CFR part 15.

(h) *Adjustments*. FNS will make adjustments as follows:

(1) *Caseload adjustments*. FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(2) of this section during a fiscal year if the number of food stamp recipients in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments*. During each fiscal year, FNS will adjust the number of exemptions allocated to a

State agency based on the number of exemptions in effect in the State for the preceding fiscal year.

(i) If the State agency does not use all of its exemptions by the end of the fiscal year, FNS will increase the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the remaining balance.

(ii) If the State agency exceeds its exemptions by the end of the fiscal year, FNS will reduce the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the corresponding number.

(i) *Reporting requirement*. The State agency will track the number of exemptions used each month and report this number to the regional office on a quarterly basis as an addendum to the quarterly Employment and Training Report (Form FNS–583) required by § 273.7(c)(8).

(j) *Other Program rules*. Nothing in this section will make an individual eligible for food stamp benefits if the individual is not otherwise eligible for benefits under the other provisions of this part and the Food Stamp Act.

[Amdt. 379, 64 FR 48257, Sept. 3, 1999, as amended at 66 FR 4469, Jan. 17, 2001; 67 FR 41618, June 19, 2002; 71 FR 33384, June 9, 2006]

§ 273.25 Simplified Food Stamp Program.

(a) *Definitions*. For purposes of this section:

(1) Simplified Food Stamp Program (SFSP) means a program authorized under 7 U.S.C. 2035.

(2) Temporary Assistance for Needy Families (TANF) means a State program of family assistance operated by an eligible State under its TANF plan as defined at 45 CFR 260.30.

(3) Pure-TANF household means a household in which all members receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(4) Mixed-TANF household means a household in which 1 or more members, but not all members, receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(5) Assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) means ''assistance'' as defined in regulations at 45 CFR 260.31.

(b) *Limit on benefit reduction for mixed-TANF households under the SFSP*. If a State agency chooses to operate an SFSP and includes mixed-TANF households in its program, the following requirements apply in addition to the statutory requirements governing the SFSP.

(1) If a State's SFSP reduces benefits for mixed-TANF households, then no more than 5 percent of these participating households can have benefits reduced by 10 percent of the amount they are eligible to receive under the regular FSP and no mixed-TANF household can have benefits reduced by 25 percent or more of the amount it is eligible to receive under the regular FSP. Reductions of $10 or less will be disregarded when applying this requirement.

(2) The State must include in its State SFSP plan an analysis showing the impact its program has on benefit levels for mixed-TANF households by comparing the allotment amount such households would receive using the rules and procedures of the State's SFSP with the allotment amount these households would receive if certified under regular Food Stamp Program rules and showing the number of households whose allotment amount would be reduced by 9.99 percent or less, by 10 to 24.99 percent, and by 25 percent or more, excluding those households with reductions of $10 or less. In order for FNS to accurately evaluate the program's impact, States must describe in detail the methodology used as the basis for this analysis.

(3) To ensure compliance with the benefit reduction requirement once an SFSP is operational, States must describe in their plan and have approved by FNS a methodology for measuring benefit reductions for mixed-TANF households on an on-going basis throughout the duration of the SFSP. In addition, States must report to FNS on a periodic basis the amount of benefit loss experienced by mixed-TANF households participating in the State's SFSP. The frequency of such reports will be determined by FNS taking into

consideration such factors as the number of mixed-TANF households participating in the SFSP and the amount of benefit loss attributed to these households through initial or on-going analyses.

(c) *Application processing standards.* Under statutory requirements, a household is not eligible to participate in an SFSP unless it is receiving TANF assistance. If a household is not receiving TANF assistance (payments have not been authorized) at the time of its application for the SFSP, the State agency must process the application using the regular Food Stamp Program requirements of § 273.2, including processing within the 30-day regular or 7-day expedited time frame, and screening for and provision of expedited service if eligible. The State agency must determine under regular food stamp rules the eligibility and benefits of any household that it has found ineligible for TANF assistance because of time limits, more restrictive resource standards, or other rules that do not apply to food stamps.

(d) *Standards for shelter costs.* Legislation governing the SFSP requires that State plans must address the needs of households with high shelter costs relative to their income. If a State chooses to standardize shelter costs under the SFSP, it must, therefore, use multiple standards that take into consideration households with high shelter costs versus those with low shelter costs. A State is prohibited from using a single standard based on average shelter costs for all households participating in an SFSP.

(e) *Opportunity for public comment.* States must provide an opportunity for public input on proposed SFSP plans (with special attention to changes in benefit amounts that are necessary in order to ensure that the overall proposal not increase Federal costs) through a public comment period, public hearings, or meetings with groups representing participants' interests. Final approval will be given after the State informs the Department about the comments received from the public. After the public comment period, the State agency must inform the Department about the comments received from the public and submit its final SFSP plan for Departmental approval.

[Amdt. 388, 65 FR 70211, Nov. 21, 2000]

Subpart H—The Transitional Benefits Alternative

SOURCE: 75 FR 4953, Jan. 29, 2010, unless otherwise noted.

§ 273.26 General eligibility guidelines.

The State agency may elect to provide households leaving TANF with transitional food stamp benefits as provided in this section. A State agency that chooses to provide transitional benefits must state in its State plan of operation that it has selected this option and specify the categories of households eligible for such benefits, the maximum number of months for which transitional benefits will be provided and any other items required to be included under this subpart H. The State agency may choose to limit transitional benefits to households in which all members had been receiving TANF, or it may provide such benefits to any household in which at least one member had been receiving TANF.

The State agency may not provide transitional benefits to a household which is leaving TANF when:

(a) The household is leaving TANF due to a TANF sanction;

(b) The household is a member of a category of households designated by the State agency as ineligible for transitional benefits;

(c) All household members are ineligible to receive food stamps because they are:

(1) Disqualified for intentional program violation in accordance with § 273.16;

(2) Ineligible for failure to comply with a work requirement in accordance with § 273.7;

(3) Receiving SSI in a cash-out State in accordance with § 273.20;

(4) Ineligible students in accordance with § 273.5;

(5) Ineligible aliens in accordance with § 273.4;

(6) Disqualified for failing to provide information necessary for making a determination of eligibility or for completing any subsequent review of its

eligibility in accordance with § 273.2(d) and § 273.21(m)(1)(ii);

(7) Disqualified for knowingly transferring resources for the purpose of qualifying or attempting to qualify for the program as provided at § 273.8(h);

(8) Disqualified for receipt of multiple food stamps;

(9) Disqualified for being a fleeing felon in accordance with § 273.11(n); or

(10) Able-bodied adults without dependents who fail to comply with the requirements of § 273.24;

(d) The State agency has the option to exclude households where all household members are ineligible to receive food stamps because they are:

(1) Disqualified for failure to perform an action under Federal, State or local law relating to a means-tested public assistance program in accordance with § 273.11(k);

(2) Ineligible for failing to cooperate with child support agencies in accordance with § 273.11(o) and (p); or

(3) Ineligible for being delinquent in court-ordered child support in accordance with § 273.11(q).

(e) The State agency must use procedures at § 273.12(f)(3) to determine the continued eligibility and benefit level of households denied transitional benefits under this section 273.26.

§ 273.27 General administrative guidelines.

(a) When a household leaves TANF, the State agency may freeze for up to 5 months the household's benefit amount after making an adjustment for the loss of TANF. This is the household's transitional period. To provide the full transitional period, the State agency may extend the certification period for up to 5 months and may extend the household's certification period beyond the maximum periods specified in § 273.10(f). Before initiating the transitional period, the State agency must recalculate the household's food stamp benefit amount by removing the TANF payment from the household's food stamp income. At its option, the State agency may also adjust the benefit to account for:

(1) Changes in household circumstances that it learns about from another State or Federal means-tested assistance program in which the household participates; or

(2) Automatic annual changes in the food stamp benefit rules, such as the annual cost of living adjustment.

(b) The State agency must include in its State plan of operation whether it has elected to make these changes:

(1) At the beginning of the transitional period; or

(2) Both at the beginning and during the transitional period.

(c) When a household leaves TANF, the State agency at its option may end the household's existing certification period and assign the household a new certification period that conforms to the transitional period. The recertification requirements at § 273.14 that would normally apply when the household's certification period ends must be postponed until the end of the new certification period. If the transitional period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action under § 273.10(f)(4) but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

§ 273.28 Application for Food Stamp Program recertification.

At any time during the transitional period, the household may apply for recertification. If a household applies for recertification during its transitional period, the State agency shall observe the following procedures:

(a) The State agency must schedule an interview in accordance with § 273.2(e);

(b) The State agency must provide the household with a notice of required verification in accordance with § 273.2(c)(5) and provide the household a minimum of 10 days to provide the required verification in accordance with § 273.2(f).

(c) Households that have met all of the required application procedures shall be notified of their eligibility or ineligibility as soon as possible, but no later than 30 calendar days following the date the application was filed.

(1) If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall continue processing the application while continuing the household's transitional benefits.

(2) If the application process cannot be completed due to State agency fault, the State agency must continue to process the application and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.2(h)(1).

(d) If the application process cannot be completed because the household failed to take a required action, the State agency may deny the application at that time or at the end of the 30 days. If the household is determined to be ineligible for the program, the State agency will deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the State agency will either recertify the household or send a RFC in accordance with § 273.31;

(e) If the household is determined eligible for the regular Food Stamp Program but is entitled to a benefit lower than its transitional benefit, the State agency shall encourage the household to withdraw its application for recertification and continue to receive transitional benefits. If the household chooses not to withdraw its application, the State agency has the option to deny the application and allow the transitional period to run its course, or complete the recertification process and issue the household the lower benefit amount beginning with the first month of the new certification period.

(f) If the household is determined eligible for the program, its new certification period will begin with the first day of the month following the month in which the household submitted the application for recertification. The State agency must issue the household full benefits for that month. For example, if the household applied for recertification on the 25th day of the third month of a 5-month transitional period, and the household is determined eligible for the regular Food Stamp Program, the State agency will begin the household's new certification period on the first day of what would have been the fourth month of the transitional period.

(g) If the household is eligible for the regular Food Stamp Program and entitled to benefits higher than its transitional benefits, and the State agency has already issued the household transitional benefits for the first month of its certification period, the State agency must issue the household a supplement.

(h) Applications for recertification submitted in the final month of the transitional period must be processed in accordance with § 273.14.

§ 273.29 Transitional notice requirements.

The State agency must issue a transitional notice (TN) to the household that includes the following information:

(a) A statement informing the household that it will be receiving transitional benefits and the length of its transitional period;

(b) A statement informing the household that it has the option of applying for recertification at any time during the transitional period. The household must be informed that if it does not apply for recertification during the transitional period, the State agency must, at the end of the transitional period, either reevaluate the household's food stamp case or require the household to undergo a recertification;

(c) A statement that if the household returns to TANF during its transitional benefit period, the State agency will either reevaluate the household's food stamp case or require the household to undergo a recertification. However, if the household has been assigned a new certification period in accordance with § 273.27(c), the notice must inform the household that it must be recertified if it returns to TANF during its transitional period;

(d) A statement explaining any changes in the household's benefit amount due to the loss of TANF income and/or changes in household circumstances learned from another State

or Federal means-tested assistance program;

(e) A statement informing the household that it is not required to report and provide verification for any changes in household circumstances until the deadline established in accordance with § 273.12(c)(3) or its recertification interview; and

(f) A statement informing the household that the State agency will not act on changes that the household reports during the transitional period prior to the deadline specified in § 273.29(e) and that if the household experiences a decrease in income or an increase in expenses or household size prior to that deadline, the household should apply for recertification.

§ 273.30 Transitional benefit alternative change reporting requirements.

If the household does report changes in its circumstances during the transitional period, the State agency may make the change effective the month following the last month of the transitional period or invite the household to reapply and be certified to receive benefits. However, in order to prevent duplicate participation, the State agency must act to change the household's transitional benefit when a household member moves out of the household and either reapplies as a new household or is reported as a new member of another household. Moreover, the State agency must remove any income, resources and deductible expenses clearly attributable to the departing member.

§ 273.31 Closing the transitional period.

In the final month of the transitional benefit period, the State agency must do one of the following:

(a) Issue the RFC specified in § 273.12(c)(3) and act on any information it has about the household's new circumstances in accordance with § 273.12(c)(3). The State agency may extend the household's certification period in accordance with § 273.10(f)(5) unless the household's certification period has already been extended past the maximum period specified in § 273.10(f) in accordance with § 273.27(a); or

(b) Recertify the household in accordance with § 273.14. If the household has not reached the maximum number of months in its certification period during the transitional period, the State agency may shorten the household's prior certification period in order to recertify the household. When shortening the household's certification period pursuant to this section, the State agency must send the household a notice of expiration in accordance with § 273.14(b).

§ 273.32 Households who return to TANF during the transitional period.

If a household receiving transitional benefits returns to TANF during the transitional period, the State agency shall end the household's transitional benefits and follow the procedures in § 273.31 to determine the household's continued eligibility and benefits for the Food Stamp Program. This includes processing the application within 30 days. However, for a household assigned a new certification period in accordance with § 273.27(c), the household must be recertified if it returns to TANF during its transitional period.

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

Sec.

274.1 Issuance system approval standards.
274.2 Providing benefits to participants.
274.3 Retailer management.
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274.5 Record retention and forms security.
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274.7 Benefit redemption by eligible households.
274.8 Functional and technical EBT system requirements.

AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 274 are contained in § 271.8.

SOURCE: 75 FR 18381, Apr. 12, 2010, unless otherwise noted.

§ 274.1 Issuance system approval standards.

(a) *Basic issuance requirements.* State agencies shall establish issuance and accountability systems which ensure that only certified eligible households receive benefits; that Program benefits

are timely distributed in the correct amounts; and that benefit issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(b) *System classification.* State agencies may issue benefits to households through any of the following systems:

(1) An on-line Electronic Benefit Transfer (EBT) system in which Program benefits are stored in a central computer database and electronically accessed by households at the point of sale via reusable plastic cards.

(2) An off-line EBT system in which benefit allotments can be stored on a card or in a card access device and used to purchase authorized items at a point-of-sale (POS) terminal without real-time authorization from a central processor.

(c) *Alternative benefit issuance system.* (1) If the Secretary, in consultation with the Office of the Inspector General, determines that Program integrity would be improved by changing the issuance system of a State, the Secretary shall require the State agency to issue or deliver benefits using another method. The alternative method may be one of the methods described in paragraph (b) of this section. The determination of which alternative to use will be made by FNS after consultation with the State agency. The cost of conversion will be shared by the Department and the State agency in accordance with the cost accounting provision of part 277 of this chapter.

(2) The cost of documents or systems which may be required as a result of a permanent alternative issuance system pursuant to this section shall not be imposed upon retail food firms participating in the Program.

(d) *Contracting or delegating issuance responsibilities.* State agencies may assign to others such as banks, savings and loan associations, and other commercial businesses, the responsibility for the issuance of benefits. State agencies may permit contractors to subcontract assigned issuance responsibilities.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FNS for all losses of benefits, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set forth in part 277 of this chapter.

(3) The State agency shall not assign the issuance of benefits to any retail food firm.

(e) *Ownership rights and procurement requirements.* (1) The State agency shall comply with the software and automated data processing equipment ownership rights prescribed under §§ 277.13 and 277.18(1) of this chapter.

(2) The State agency shall comply with the procurement standards prescribed under § 277.18(j) of this chapter. Under service agreements, the procurement of equipment and services which will be utilized in the SNAP EBT system shall be conducted in accordance with the provisions set forth under § 277.18(f) of this chapter.

(f) *Advance planning documentation.* State agencies must comply with the procurement requirements of part 277 of this chapter for the acquisition, design, development, or implementation of initial and subsequent EBT systems. With certain exceptions detailed in part 277, State agencies must receive prior approval for the design and acquisition of EBT systems through submission of advance planning documents (APDs).

(1) *Pilot project approval requirements.* To the extent the State is moving EBT to new technology or incorporating enhancements or upgrades that significantly change the architecture and interface requirements or functionality of issuing benefits electronically:

(i) The State agency shall comply with the two stage approval process for submitting an EBT system proposal to FNS for approval. The Planning APD shall contain the requirements specified under § 277.18(d)(1) of this chapter, including a brief letter of intent, planning budget, cost allocation plan, and schedule of activities and deliverables.

(ii) The State agency shall implement EBT systems in a pilot area prior

to expansion statewide or to other project areas. The areas of pilot operation and full scale operation shall be identified in the planning APD when submitted to FNS for approval.

(A) *Pilot project site and expanded site descriptions.* At a minimum, the proposed pilot project site and expanded site descriptions shall include the geographical boundaries, average number and characteristics of Program participants and households, the number and type of authorized food retailers and authorized retailers bordering the pilot and expanded areas, the SNAP redemption patterns of food retailers, the status of commercial POS deployment and the estimated number of checkout lanes that will require POS equipment; and

(B) *A description of major contacts.* A description of initial contacts the State agency has made in the proposed pilot area among food retailers, financial institutions and households or their representatives that may be affected by implementation of the EBT system. Written commitments from the retail grocer community (including supermarket chains, independent retailers, and convenience stores) and participating financial institutions in the pilot area shall be provided along with other documentation that demonstrates the willingness to support the proposed EBT system within the pilot area and expanded system area. The State agency shall submit evidence of contacts with recipient organizations and others.

(iii) *Pilot project reporting.* The State agency is required to report to FNS all issues that arise during the pilot period. Reports to FNS shall be provided as problems occur. In instances where the State agency must investigate the issue, FNS must receive the information no later than 1 month after completion of the pilot operations.

(iv) *Expansion requirements.* The pilot and expansion schedule must be delineated in the State agency's approved implementation plan. As part of the plan, the State agency must indicate a suitable pilot area to serve as the basis of the 3-month analysis and reporting, however, expansion can occur simultaneously with pilot operations. Submission of an Advanced Planning Document Update to request FNS approval to implement and operate the EBT system in areas beyond the pilot area is only required in instances where there are substantial changes to the implementation plan. However, if significant problems arise during the pilot period or expansion, the Department can require the roll-out be suspended until such problems are resolved.

(2) *EBT Implementation APD.* The EBT Implementation APD shall include the completed documents required under § 277.18 of this chapter for implementation APDs, where appropriate. Also, the State agency shall commit to completing and submitting the following documents for FNS approval and obtaining such approval prior to issuance of benefits to eligible households in the project area:

(i) *Functional demonstration.* A functional demonstration of the functional requirements prescribed in § 274.8 in combination with the system components described by the approved system design is recommended in order to identify and resolve any problems prior to acceptance testing. The Department reserves the right to participate in the functional demonstration if one is conducted. FNS may require that any or all of these tests be repeated in instances where significant modifications are made to the system after these tests are initially completed or if problems that surfaced during initial testing warrant a retest;

(ii) *An acceptance test plan.* The Acceptance Test Plan for the project shall describe the methodology to be utilized to verify that the EBT system complies with Program requirements and System Design specifications. At a minimum, the Acceptance Test Plan shall address:

(A) The types of testing to be performed;

(B) The organization of the test team and associated responsibilities, test database generation, test case development, test schedule, and the documentation of test results. Acceptance testing shall include functional requirements testing, error condition handling and destructive testing, security testing, recovery testing, controls testing, stress and throughput performance testing, and regression testing;

(C) A ''what-if'' component shall also be included to permit the opportunity for observers and participants to test possible scenarios in a free-form manner.

(D) The Department reserves the right to participate and conduct independent testing as necessary during the acceptance testing and appropriate events during system design, development, implementation and operation.

(iii) *An acceptance test report.* The State agency shall provide a separate report after the completion of the acceptance test only in instances where FNS is not present at the testing or when serious problems are uncovered during the testing that remain unresolved by the end of the test session. The report shall summarize the activities, describe any discrepancies, describe the proposed solutions to discrepancies, and the timetable for their retesting and completion. In addition, the report shall contain the State agency's recommendations regarding implementation of the EBT system.

(iv) *A prototype food retailer agreement.* The State agency shall enter an agreement with each FNS authorized retailer that complies with the requirements under § 274.3.

(v) *An implementation plan.* The implementation plan shall include the following:

(A) A description of the tools, procedures, detailed schedules, and resources needed to implement the project;

(B) The equipment acquisition and installation requirements, ordering schedules, and system and component testing;

(C) A phase-in-strategy which permits a measured and orderly transition from one EBT system to another. In describing this strategy, the plan shall address schedules that avoid disruption of normal shopping patterns and operations of participating households and food retailers. Training of SNAP households, State agency personnel and retailers and/or their trainers shall be coordinated with the installation of equipment in retail stores;

(D) A description of on-going tasks associated with fine-tuning the system and making any corrective actions necessary to meet contractual requirements. The description shall also address those tasks associated with ongoing training, document updates, equipment maintenance, on-site support and system adjustments, as needed to meet Program requirements; and,

(E) A plan for orderly phase-out of the project and/or for continuing benefit issuance operations if it is demonstrated during the pilot project or conversion operations that the new system is not acceptable.

(vi) *A contingency plan.* The State agency shall submit a written contingency plan for FNS approval. The contingency plan shall contain information regarding the back-up issuance system that will be activated in the event of an emergency shut-down which results in short-term or extended system inaccessibility, or total discontinuation of EBT system operations. The contingency plan shall be incorporated into the State system security plan after FNS approval as prescribed at § 277.18(p) of this chapter.

(3) *EBT Implementation APD budget.* The Implementation APD budget shall be prepared and submitted for FNS approval in accordance with the requirements of paragraph (k) of this section and § 277.18(d)(2) of this chapter.

(g) *EBT system administration.* (1) The State agency shall be responsible for the coordination and management of the EBT system. The Secretary may suspend or terminate some or all EBT system funding or withdraw approval of the EBT system from the State agency upon a finding that the State agency or its contracted representative has failed to comply with the requirements of this section and/or § 277.18 of this chapter.

(2) All EBT systems within a State must follow a single EBT APD and system architecture submitted by the State agency. Multiple EBT designs will be acceptable only if such designs can be fully justified by the State agency; the system differences are transparent to participating households that move within the State; operating costs are the same or lower; and the different systems have the ability to readily communicate (transaction interchange) with one another.

(3) The State agency shall indicate how it plans to incorporate additional

programs into the EBT system if it anticipates the addition of other public assistance programs concurrent with or after implementation of the SNAP EBT system. The State agency shall also consult with the State agency officials responsible for administering the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) prior to submitting the Planning APD for FNS approval.

(4) The State agency shall ensure that a sufficient number of authorized food retailers have agreed to participate throughout the area in which the EBT system will operate to ensure that eligible SNAP households will not suffer a significant reduction in their choice of retail food stores and that a sufficient number of retail food stores serving minority language populations are participating.

(h) *Master issuance file.* (1) The State agency shall establish a master issuance file which is a composite of the issuance records of all certified SNAP households. The State agency shall establish the master issuance file in a manner compatible with its system used for maintaining case record information and shall separate the information on the master issuance file into active and inactive case file categories. The master issuance file shall contain all the information needed to identify certified households, issue household benefits, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements prescribed in § 274.4.

(i) The master issuance file shall be kept current and accurate. It shall be updated and maintained through the use of documents such as notices of change and controls for expired certification periods.

(ii) Before entering a household's data on the master issuance file, the State agency shall review the master issuance file to ensure that the household is not currently participating in, or disqualified from, the Program. If benefits are issued under the expedited service requirements of §§ 273.2(i) of this chapter and 274.2(b), the State agency shall complete as much of the master issuance file review as possible prior to issuing the benefits. Any uncompleted reviews shall be completed after issuance and appropriate corrective action shall be taken to recover overissuance.

(2) State agencies should divide issuance responsibilities between at least two persons to prevent any single individual from having complete control over the authorization of issuances and the issuances themselves. Responsibilities to be divided include maintenance of inventory records, the posting of benefits to an EBT account and preparation of EBT cards and PINs for mailing. If issuance functions in an office are handled by one person, a second-party review shall be made to verify card inventory, the reconciliation of the mail log, and the number of mailings prepared.

(3) State agencies shall establish controls to prevent a household from concurrently receiving benefits through expedited and normal issuance services.

(4) State agencies shall clearly identify issuances in their accountability systems as initial, supplemental, replacement, or restored benefits.

(i) *State monitoring, examinations, and audits.* (1) The State agency's accountability system shall include procedures for monitoring benefit issuers to assure that the day-to-day operations of all benefit issuers comply with these regulations, to identify and correct deficiencies, and to report violations of the Act or regulations to FNS.

(2) The State agency must obtain an examination by an independent auditor of the transaction processing of the State EBT service provider regarding the issuance, redemption, and settlement of Program benefits. The examination must be done at least annually and the report must be completed ninety days after the examination period ends. Subsequent examinations must cover the entire period since the previous examination. Examinations must follow the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70, Service Organizations (SAS No. 70), requirements for reports on controls placed in operation and tests of the operating effectiveness of the controls.

(i) The examination report must include a list of all States whose systems

operate under the same control environment. Auditors conducting the examination must follow EBT guidance contained in the Office of Management and Budget (OMB) Circular A–133 Compliance Supplement to the extent the guidelines refer to SNAP benefits. (For availability of OMB Circulars referenced in this section, *see* 5 CFR 1310.3.)

(ii) The State agency must retain a copy of the SAS No. 70 examination report.

(iii) The State agency shall respond to written requests from the Food and Nutrition Service (FNS), USDA Office of the Inspector General (OIG), or the General Accountability Office (GAO) for completed SAS No. 70 examination reports by providing the report within thirty days of receipt of the written request.

(iv) The State agency shall respond to written requests from FNS, OIG, or GAO to view auditor's workpapers from SAS No. 70 reports by arranging to have workpapers made available within thirty days of receipt of the written request.

(v) FNS and the USDA OIG shall rely on SAS No. 70 reports on EBT transaction processing services provided by contractors to the State. FNS and USDA OIG reserve the right to conduct other reviews or audits if necessary.

(vi) EBT services provided directly by the State are not subject to SAS No. 70 examination requirements of this section but remain subject to the single audit requirements at 7 CFR 277.7 and OMB Circular A–133.

(j) *Compliance Investigations.* State agencies shall provide on-line read-only access to State EBT systems for compliance investigations.

(1) The State agency is required to provide software and telecommunications capability as necessary to FNS Retailer Investigation Branch Area offices, Regional offices and Field offices so that FNS compliance investigators, other appropriate FNS personnel and USDA OIG investigators have access to the system in order to conduct investigations of program abuse and alleged violations;

(2) The State agency must ensure that FNS compliance investigators and USDA OIG investigators have access to EBT cards and accounts that are updated as necessary to conduct SNAP investigations.

(k) *Federal financial participation.* (1) The cost of administering statewide benefit issuance after implementation of the EBT system shall be funded at the regular Federal financial participation rate.

(2) The State agency shall comply with the provisions set forth under 7 CFR 277.18 and appendix A of 7 CFR 277.18 of this chapter in determining and claiming allowable costs for the EBT system.

(3) Access to system documentation, including cost records of contractors or subcontractors shall be made available and incorporated into contractual agreements in accordance with §277.18(k) of this chapter.

(4) State agencies may receive one hundred percent Federal funding for the costs they incur for switching and settling all SNAP interstate transactions. For purposes of this section, the term ''switching'' means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term ''settling'' means movement, and reporting such movement, of funds from an EBT card issuer located in one State to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to $500,000 nationwide. Once the $500,000 limitation is exceeded, Federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. To qualify for this funding, the State agency must:

(i) Meet standards of interoperability and portability under §274.8;

(ii) Sign and submit, in each fiscal year for which the State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the fiscal year in which

costs are incurred in order to qualify for payment for that fiscal year, and

(iii) Submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter, when such requests for payments are scheduled to be processed.

§ 274.2 Providing benefits to participants.

(a) *General.* Each State agency is responsible for the timely and accurate issuance of benefits to certified eligible households, including EBT system compliance with the expedited service benefit delivery standard and the normal application processing standards, as prescribed by these regulations. Those households located in rural areas or comprised of elderly or disabled members who have difficulty reaching issuance offices, and households which do not reside in a permanent dwelling or of a fixed mailing address shall be given assistance in obtaining an EBT card. State agencies shall assist these households by arranging for the mailing of EBT cards to them, by assisting them in finding authorized representatives who can act on their behalf, or by using other appropriate means.

(b) *Availability of benefits.* All newly certified households, except those that are given expedited service, shall be given an opportunity to participate no later than 30 calendar days following the date the application was filed. An opportunity to participate consists of providing households with an active EBT card and PIN, and benefits that have been posted to the household's EBT account and are available for spending. State agencies, utilizing a centralized mailing system, must mail EBT cards and PINs, if applicable, in time to assure that the benefits can be spent after they are received but before the 30-day standard expires. A household has not been provided an opportunity to participate within the 30-day standard if the EBT card or PIN is mailed on the 29th or 30th day. For households entitled to expedited service, the State agency shall make benefits available to the household not later than the seventh calendar day following the date of application. State agencies which issue EBT cards by mail shall, at a minimum, use first class mail and sturdy nonforwarding envelopes or packages to send EBT cards to households.

(c) *Combined allotments.* For those households which are to receive a combined allotment, the State agency shall provide the benefits for both months as an aggregate (combined) allotment, or as two separate allotments, made available at the same time, in accordance with the timeframes specified in § 273.2 of this chapter.

(d) *Ongoing households.* State agencies shall establish an availability date for household access to their benefits and inform households of this date. All households shall be placed on an issuance schedule so that they receive their benefits on or about the same date each month. The date upon which a household receives its initial allotment after certification need not be the date that the household must receive its subsequent allotments.

(1) State agencies may stagger issuance throughout the month, or for a shorter period. When staggering benefit delivery, however, State agencies shall not allow more than 40 days to elapse between the issuance of any two allotments provided to a household participating longer than two consecutive, complete months. Regardless of the issuance schedule used, the State agency shall adhere to the reporting requirements specified in § 274.4.

(2) Upon the request of the Tribal organization that exercises governmental jurisdiction over a reservation, the State agency shall stagger the issuance of benefits for eligible households located on reservations for at least 15 days each month.

(3) When a participating household is transferred from one issuance system or procedure to another issuance system or procedure, the State agency shall not permit more than 40 days to

elapse between the last issuance under the previous system or procedure, and the first issuance under the new system or procedure. The 40-day requirement does not apply to instances in which actions by recipients, such as failure to submit a monthly report, disrupt benefits. Transfers include, but are not limited to, households being moved into or out of a staggered issuance procedure and households on a fluctuating schedule within a staggered system. If the State agency determines that more than 40 days may elapse between issuances, the State agency shall divide the new issuance into two parts, with one part being issued within the 40-day period, and the second part, or supplemental issuance, being issued on the household's established issuance date in the new system or procedure. The supplemental issuance cannot provide the household more benefits than the household is entitled to receive.

(4) Notwithstanding the above provisions, in months in which benefits have been suspended under the provisions of § 271.7 of this chapter, State agencies may stagger issuance to certified households following the end of the suspension. In such situations, State agencies may, at their option, stagger issuance from the date issuance resumes through the end of the month or over a five-day period following the resumption of issuance, even if this results in benefits being issued after the end of the month in which the suspension occurred.

(e) *Household training*. The State agency shall provide training to each household prior to implementation and as needed during ongoing operation of the EBT system. Training functions for an EBT system may be incorporated into certification procedures. At a minimum, the household training shall include:

(1) Content which will familiarize each household with the provisions of paragraphs (e) through (h) of this section and §§ 274.6 and 274.7;

(2) Notification to the household of the procedures for manual transactions and re-presentation as described in § 274.8(d);

(3) The appropriate utilization and security of the PIN;

(4) Each household's responsibilities for reporting loss or damage to the EBT card and who to report them to, both during and outside business hours. Information on a 24 hour hotline telephone number shall be provided to each household during training;

(5) Written materials and/or other information, including the specific rights to benefits in an EBT system, shall be provided as prescribed under 7 CFR 272.4(b) for bilingual households and for households with disabilities. This shall include the statement of non-discrimination found in Departmental Regulation 4300–3 (available from USDA, Office of Civil Rights, Room 326–W, Whitten Building, Washington, DC 20250). Written materials shall be prepared at an educational reading level suitable for SNAP households;

(6) Information on the signs or other appropriate indicators located in checkout lanes that enable the household to identify lanes equipped to accept EBT cards.

(7) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing.

(f) *Personal Identification Number* (PIN). The State agency shall permit SNAP households to select their PIN. PIN assignment procedures shall be permitted in accordance with industry standards as long as PIN selection is available to clients if they so desire and clients are informed of this option.

(g) *Adjustments*. (1) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(2) A State agency shall make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, to a store's host computer or POS device. These adjustments may occur

after the availability date and may result in either a debit or credit to the household.

(i) *Client-initiated adjustments.* The State agency must act on all requests for adjustments made by client households within 90 calendar days of the error transaction. The State agency has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account. This timeframe also applies if the State agency or entity other than the household discovers a system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and Federal holidays.

(ii) *Retailer-initiated adjustments.* The State agency must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owed is subject to collection from the household's next future month's benefits.

(A) The household shall have 90 days from the date of the notice to request a fair hearing.

(B) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment amount, the hold may be maintained and settled at one time after the next month's benefits become available.

(3) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (h)(3) of this section.

(h) *Stale account handling.* Stale benefit accounts are those Program benefit accounts which are not accessed for three months or longer.

(1) If EBT accounts are inactive for 3 months or longer, the State agency may store such benefits offline.

(i) Benefits stored off-line shall be made available upon reapplication or re-contact by the household;

(ii) The State agency shall attempt to notify the household of this action before storage of the benefits off-line and describe the steps necessary to bring the benefits back on-line;

(2) The State agency shall expunge benefits that have not been accessed by the household after a period of one year. Issuance reports shall reflect the adjustment to the State agency issuance totals to comply with monthly issuance reporting requirements prescribed under § 274.4.

(3) Procedures shall be established to permit the appropriate managers to adjust benefits that have already been posted to a benefit account prior to the household accessing the account; or, after an account has become dormant. The procedures shall also be applicable to removing stale accounts for off-line storage of benefits or when the benefits are expunged. Whenever benefits are expunged or stored off-line, the State agency shall document the date, amount of the benefits and storage location in the household case file.

§ 274.3 Retailer management.

(a) *Retailer participation.* (1) All authorized retailers must be afforded the opportunity to participate in the EBT system. An authorized food retailer shall not be required to participate in an EBT system.

(i) Retailers who do not have immediate access to telephones at the time

of authorization shall be accommodated by an alternative system (*e.g.*, manual vouchers with preliminary or delayed telephone verification) for redeeming Program benefits from eligible SNAP customers. These retailers include stationary food stores which opt to make home deliveries to SNAP households, house-to-house trade routes which operate on standing orders from customers, *e.g.* milk and bread delivery routes, food buying cooperatives authorized to participate as well as other food retailers authorized under §278.1 of this chapter. Prior to delivery or upon returning to the store, the retailer shall telephone the EBT central computer or hotline number to log the transaction and obtain an authorization number. If authorization cannot be obtained before or at the time of purchase, the retailer assumes the risk for sufficient benefits being available in the household's account. Any alternate method cannot be burdensome on either the household or the retailer, and it must include acceptable privacy and security features. Such systems shall only be available to retailers that cannot be equipped with a POS terminal at the time of authorization.

(ii) Newly authorized retailers shall have access to the EBT system within 2 weeks after the receipt of the FNS authorization notice. However, whenever a retailer chooses to employ a third party processor to drive its terminals or elects to drive its own terminals, access to the system shall be accomplished within a 30 day period or a mutually agreed upon time to enable the third party interface specifications and any State required functional certification to be performed by the State agency and/or its contractor.

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for SNAP. In addition, if Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes. The State agency may choose to charge retailers reasonable fees in the following circumstances:

(i) Cost for the replacement of lost, stolen or damaged equipment;

(ii) The cost of materials and supplies for POS terminals not provided by the State agency;

(iii) Telecommunication costs for all non-EBT use by retailers when lines are provided by the State agency. In addition, State agencies may remove phone lines from retailers in instances where there is significant misuse of the lines.

(3) The State agency shall ensure that the EBT system provides credits to the financial institution holding the accounts for retailers or third party processors within two business days of the daily cut-over period for retailer settlement. The cut-over period is the time of day established by the system to define the end of a transaction day for settlement and reconciliation.

(b) *POS deployment.* POS terminals shall be deployed as follows:

(1) For an FNS authorized retailer with Program benefit redemption amounting to 15 percent or more of total food sales, all checkout lanes shall be equipped;

(2) For an FNS authorized retailer with Program benefit redemptions representing less than 15 percent of total food sales, superstores and supermarkets shall, at a minimum, receive one terminal for every $11,000 in monthly redemption activity up to the number of lanes per store. All other food retailers shall receive one terminal for every $8,000 in monthly redemption activity up to the number of lanes per store. However, a State agency may utilize an alternative deployment formula that permits equipment deployment at higher levels than required by this paragraph up to the number of lanes in each store. The State agency shall review terminal deployment on a yearly basis and shall be authorized to remove excess terminals if actual redemption activity warrants a reduction.

(3) For newly authorized retailers, the State agency and retailer shall negotiate a mutually agreed level of terminal deployment up to the number of lanes per store. The State agency may

consult with the appropriate FNS field office in order to determine the previous SNAP redemption activity that could be utilized in determining the initial number of terminals to deploy in newly authorized retailer firms. State agencies will also need to make accommodations for border stores that are deemed necessary for client access. To do so, State agencies must ensure that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment. Redemption information shall remain confidential. Unauthorized release of redemption information is subject to penalties defined in Section 15 of the Food and Nutrition Act of 2008 (7 U.S.C. 2024).

(4) Any FNS authorized retailer shall be able to submit further evidence that it warrants additional terminals after the initial POS terminals are deployed. SNAP households may also submit evidence to the State agency that additional POS terminals are needed. State agencies may provide retailers with additional terminals above the minimum number required by this paragraph at customer service booths or other locations if appropriate.

(c) *Retailer agreements.* The State agency shall enter into an agreement with each authorized retailer. The retailer agreement shall describe the terms and conditions of participation in the SNAP EBT system. At a minimum, the agreement shall:

(1) Describe all terms and conditions with respect to equipment ownership, lease arrangements, handling and maintenance for which the State agency and merchant are liable;

(2) Describe the agreed upon procedures and policies for participation and withdrawal from the EBT system;

(3) Comply with all Program regulations with respect to retailer participation in the Program and treatment of SNAP households. This shall include specific requirements with respect to the deployment of terminals and the identification of checkout lanes for SNAP customers;

(4) Delineate the liabilities during system downtime and the associated responsibilities of each party with respect to the use of off-line and/or manually entered data, paper vouchers, and re-presented vouchers.

(d) Third party processors are financial institutions, cardholder authorization processors other than the party with which the State agency has contracted for EBT services, and food retailers driving their own terminals that are capable of relaying electronic transactions to a central database computer for authorization. The State agency shall afford retailers the opportunity to use third party processors and shall provide interface specifications and certification standards in order for the third party processor to participate in the EBT system.

(1) In order to participate in a SNAP EBT system, a third party processor must be able to meet all third party interface specifications and certification standards associated with § 274.8. The State agency shall make available to third party processors the third party interface specifications prior to implementation of the EBT system to enable third party processors to access the database. Third party processors shall undergo functional and acceptance tests as specified by the State agency;

(2) Third party processors shall be liable for transactions until the transaction has been electronically accepted by the contracted vendor or an intermediate processing facility;

(3) The State agency shall ensure that third party processors and food retailers driving their own terminals comply with this section and all applicable Program regulations.

(e) *Managing retailer participation.* The State agency shall:

(1) Convey retailer authorization information provided by FNS to the system operator using the Retailer EBT Data Exchange (REDE) system. The State agency must access the REDE files to ensure that the FNS retailer files used to authorize valid EBT SNAP transactions are updated on a daily basis.

(2) Follow-up on actions taken regarding any disqualification or withdrawal of an authorized retailer from the Program must occur within two business days after receipt;

(3) Add newly authorized retailers or third party processors to the EBT system as prescribed under paragraph (a)(1)(ii) of this section.

(4) Ensure that only currently authorized retailers can access the system;

(5) Monitor retailers to ensure that equipment deployment complies with paragraph (b) of this section;

(6) Ensure that equipment and supplies are maintained in working order for retail stores equipped by the State agency or its contractor. Equipment shall be replaced or repaired within 48 hours;

(7) Ensure that retail store employees are trained in system operation prior to redeeming benefits. Retailer training shall be offered by the State agency and include the provision of appropriate written and program specific materials. Retailers have the option to waive instruction by the State agency if they desire. State agencies shall direct retailers to confirm in writing that they are waiving their option to training;

(8) Conduct adjustments as prescribed under § 274.2(g) of this chapter;

§ 274.4 Reconciliation and reporting.

(a) *Reconciliation*. State agencies shall account for all issuance through a reconciliation process. The EBT system shall provide reports and documentation pertaining to the following:

(1) *Reconciliation*. Reconciliation shall be conducted and records kept as follows:

(i) Reconciliation of benefits posted to household accounts on the central computer against benefits on the Issuance Authorization File;

(ii) Reconciliation of individual household account balances against account activities on a daily basis;

(iii) Reconciliation of each individual retail store's SNAP transactions per POS terminal and in total to deposits on a daily basis;

(iv) Verification of retailer's credits against deposit information entered into the automated clearinghouse (ACH) network;

(v) Reconciliation of total funds entered into, exiting from, and remaining in the system each day;

(vi) Maintenance of audit trails that document the full cycle of issuance from benefit allotment posting to the State issuance authorization file through posting to POS transactions at retailers through settlement of retailer credits.

(b) *Management reports*. The State agency shall require the EBT system to provide reports that enable the State agency to manage the system. The reports shall be available to the State agency or FNS as requested on a timely basis and consist of:

(1) Information on how the system operates relative to its performance standards, the incidence, type and cause of system problems, and utilization patterns.

(2) Retailer transaction data submitted to FNS on a monthly basis. This data must be submitted in the specified format in accordance with the required schedule.

(3) Data detailing by specified category the amount of Program benefits issued or returned through the EBT system shall be provided in a format and mechanism specified by FNS to the FNS Account Management Agent as the benefits become available to recipients. This data will be used to increase or decrease the SNAP EBT benefit funding authorization for the State's Automated Standard Application for Payment (ASAP) account.

(c) *Required reports*. The State agency shall review and submit the following reports to FNS on a monthly basis:

(1) Form FNS–46, Issuance Reconciliation Report, shall be submitted by each State agency operating an issuance system. The report shall be prepared at the level of the State agency where the actual reconciliation of posted benefits and the master issuance file occurs.

(i) The State agency shall identify and report the number and value of all issuances which do not reconcile with the master issuance file. All unreconciled issuances shall be identified as specified on this reporting document.

(ii) The report shall be received by FNS no later than 90 days following the end of the report month.

(2) *Form FNS–388, State Issuance and Participation Estimates.* (i) State agencies shall telephone or transmit by computer the Form FNS–388 data and mail the reports to the FNS regional office no later than the 19th day of each month. When the 19th falls on a weekend or holiday, the Form FNS–388 data shall be reported by telephone or transmitted by computer and mailed on the first work day after the 19th. The Form FNS–388 report shall be signed by the person responsible for completing the report or a designated State agency official.

(ii) The Form FNS–388 report shall provide Statewide estimated or actual totals of issuance and participation for the current and previous month, and actual or final participation totals for the second preceding month. In addition to the participation totals for the second preceding months of January and July, provided on the March and September reports, non-assistance (NA) and public assistance (PA) household and person participation breakdowns shall be provided. As an attachment to the March and September Form FNS–388 reports, State agencies shall provide project area breakdowns of benefit issuance and NA/PA household and person participation data for the second preceding months of January and July.

(iii) State agencies shall submit any proposed changes in their estimation procedures to be used in determining the Form FNS–388 data to the FNS regional office for review and comment. FNS shall monitor the accuracy of the Statewide estimated dollar value of benefits issued and the number of households and persons participating as reported on the Form FNS–388 report against the Statewide actual total participation as reported on succeeding Form FNS–388 reports and against the semiannual project area participation totals attached to the March and September Form FNS–388 reports. The FNS accuracy standards for the issuance and participation estimates are that estimates for the current month be within (+) or (−) four (4) percent of actual levels, and the estimates for the previous month be within (+) or (−) two (2) percent of actual levels. State agencies shall explain any unusual circumstances that cause benefit issuance and/or participation data to not meet these accuracy standards. If a State agency fails to meet these accuracy standards, FNS shall notify the State agency and assist the State agency in revising its estimating procedures to improve its reporting.

(iv) A participating household is one that is certified and has been, or will be, issued benefits (whether or not the benefits are used), and households that have met the eligibility requirements, but will receive zero benefits.

§ 274.5 Record retention and forms security.

(a) *Availability of records.* (1) The State agency shall maintain issuance, inventory, reconciliation, and other accountability records for a period of three years as specified in § 272.1(f) of this chapter. This period may be extended at the written request of FNS.

(2) In lieu of the records themselves, easily retrievable microfilm, microfiche, or computer tapes which contain the required information may be maintained.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similar controls from the point of initial receipt through the issuance and reconciliation process.

(c) *Accountable documents.* (1) EBT cards shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(i) Secure storage;

(ii) Access limited to authorized personnel;

(iii) Bulk inventory control records;

(iv) Subsequent control records maintained through the point of issuance or use; and

(v) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(2) For notices of change which initiate, update or terminate the master issuance file, the State agency shall, at a minimum, provide secure storage and

shall limit access to authorized personnel.

§ 274.6 Replacement issuances and cards to households.

(a) *Providing replacement issuance.* (1) Subject to the restrictions in paragraph (a)(3) of this section, State agencies shall provide replacement issuances to a household when the household reports that food purchased with Program benefits was destroyed in a household misfortune.

(2) Where a Federal disaster declaration has been issued and the household is eligible for disaster SNAP benefits under the provisions of part 280, the household shall not receive both the disaster allotment and a replacement allotment for a misfortune.

(3) *Replacement restrictions.* (i) Replacement issuances shall be provided only if a household timely reports a loss orally or in writing. The report will be considered timely if it is made to the State agency within 10 days of the date food purchased with Program benefits is destroyed in a household misfortune.

(ii) No limit on the number of replacements shall be placed on the replacement of food purchased with Program benefits which was destroyed in a household misfortune.

(iii) Except for households certified under 7 CFR part 280, replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

(4) *Household statement of loss.* (i) Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. The required statement may be mailed to the State agency if the household member is unable to come into the office because of age, handicap or distance from the office and is unable to appoint an authorized representative.

(ii) If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received.

(iii) The statement shall be retained in the case record. It shall attest to the destruction of food purchased with the original issuance and the reason for the replacement. It shall also state that the household is aware of the penalties for intentional misrepresentation of the facts, including but not limited to, a charge of perjury for a false claim.

(5) *Time limits for making issuance replacements.* (i) Replacement issuances shall be provided to households within 10 days after report of loss or within two (2) working days of receiving the signed household statement required in paragraph (a)(4) of this section, whichever date is later.

(ii) The State agency shall deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

(iii) The household shall be informed of its right to a fair hearing to contest the denial or delay of a replacement issuance. Replacements shall not be made while the denial or delay is being appealed.

(6) *Verifying issuance and household misfortune.* (i) Upon receiving a request for replacement of an issuance for food destroyed in a household misfortune, the State agency shall determine if the issuance was validly issued. The State agency shall also comply with all applicable provisions in paragraphs (a)(3) through (a)(5)of this section.

(ii) Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit.

(7) *Documentation and reconciliation of replacement issuances.* (i) The State agency shall document in the household's case file each request for replacement, the date, the reason, and whether or not the replacement was provided. This information may be recorded exclusively on the household

statement required in paragraph (a)(4) of this section.

(ii) The State agency shall maintain, in readily-identifiable form, a record of the replacements granted to the household, the reason, and the month. The record may be a case action sheet maintained in the case file, notations on the master issuance file, if readily accessible, or a document maintained solely for this purpose.

(iii) When a request for replacement is made late in an issuance month, the replacement will be issued in a month subsequent to the month in which the original benefit was issued. All replacements shall be posted and reconciled to the month of issuance of the replacement and may be posted to the month of issuance of the original benefit, so that all duplicate transactions may be identified.

(b) *Providing replacement EBT cards or PINs.* In general, the State agency shall replace EBT cards within 2 business days following notice by the household to the State agency that the card has been lost or stolen. In cases where the State agency is using centralized card issuance, replacement can be extended to take place within up to five calendar days. In all instances, the State agency must ensure that clients have in hand an active card and PIN with benefits available on the card, within the time frame the State agency has identified for card replacement.

(1) The State agency shall ensure that a duplicate account is not established which would permit households to access more than one account in the system.

(2) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(3) The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card; however, the fee may not exceed the cost to replace the card. If the State agency intends to collect the fee by reducing the monthly allotment, it must follow FNS reporting procedures for collecting program income. State agencies currently operating EBT systems must inform FNS of their proposed collection operations. State agencies in the process of developing an EBT system must include the procedure for collection of the fee in their system design document. All plans must specify how the State agency intends to account for card replacement fees and include identification of the replacement threshold, frequency, and circumstances in which the fee shall be applicable. State agencies may establish good cause policies that provide exception rules for cases where replacement card fees will not be collected.

§ 274.7 Benefit redemption by eligible households.

(a) *Eligible food.* Program benefits may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households, the purchase of prepared meals, and for other households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with benefits.

(b) *Prior payment prohibition.* Program benefits shall not be used to pay for any eligible food purchased prior to the time at which an EBT card is presented to authorized retailers or meal services. Neither shall benefits be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(c) *Transaction limits.* No minimum dollar amount per transaction or maximum limit on the number of transactions shall be established. In addition, no transaction fees shall be imposed on SNAP households utilizing the EBT system to access their benefits.

(d) *Access to balances.* (1) Households shall be permitted to determine their SNAP account balances without making a purchase or standing in a checkout line.

(2) The State agency shall ensure that the EBT system is capable of providing a transaction history for a period of up to 2 calendar months to households upon request.

(3) Households shall be provided printed receipts at the time of transaction in accordance with § 274.8(b)(7).

(e) *Access to retail stores.* (1) The EBT system shall provide for minimal disruption of access to and service in retail stores by eligible households.

(2) The EBT system shall not result in a significant increase in the cost of food or cost of transportation to authorized retailers for SNAP households.

(f) *Equal treatment.* The EBT system shall be implemented and operated in a manner that maintains equal treatment for SNAP households in accordance with § 278.2(b) of this chapter. The following requirements for the equal treatment of SNAP households shall directly apply to EBT systems:

(1) Retailers shall not establish special checkout lanes which are only for SNAP households. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, SNAP customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(2) Checkout lanes equipped with POS devices shall be made available to SNAP households during all retail store hours of operation.

(g) *Households eligible for prepared meals.* (1) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use Program benefits to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(2) *Communal dining facilities.* Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use Program benefits issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for that purpose.

(3) *Residents of certain institutions.* (i) Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment rehabilitation program may use Program benefits to purchase food prepared for them during the course of such program by a private nonprofit organization or institution or publicly operated community mental health center which is authorized by FNS to redeem benefits in accordance with §§ 278.1 and 278.2(g) of this chapter.

(ii) Eligible residents of a group living arrangement may use Program benefits issued to them to purchase meals prepared especially for them at a group living arrangement which is authorized by FNS to redeem benefits in accordance with §§ 278.1 and 278.2(g) of this chapter.

(iii) Residents of shelters for battered women and children as defined in § 278.1(g) of this chapter may use their Program benefits to purchase meals prepared especially for them at a shelter which is authorized by FNS to redeem benefits in accordance with §§ 278.1 and 278.2(g) of this chapter.

(4) *Homeless households.* (i) Homeless SNAP households may use their Program benefits to purchase prepared meals from authorized homeless meal providers.

(ii) Eligible homeless households may use Program benefits to purchase meals from restaurants authorized by FNS for such purpose.

(h) Eligible households residing in areas of Alaska determined by FNS as areas where access to authorized retailers is difficult and which rely substantially on hunting and fishing for subsistence may use all or any part of the Program benefits issued to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons and knives, but may not use benefits to purchase firearms, ammunition, and other explosives.

(i) State agencies shall implement a method to ensure that access to prepared meals and hunting and fishing

equipment is limited to eligible households as described in paragraphs (g) through (h) of this section.

§ 274.8 Functional and technical EBT system requirements.

(a) *Functional requirements.* The State agency shall ensure that the EBT system is capable of performing the following functional requirements prior to implementation:

(1) *Authorizing household benefits.* (i) Issuing and replacing EBT cards to eligible households;

(ii) Permitting eligible households to select a personal identification number (PINs) at least four digits in length;

(iii) Establishing benefit cards and accounts with the central computer database;

(iv) Maintaining the master household issuance record file data and current authorization information;

(v) Training households and other users in system usage;

(vi) Authorizing benefit delivery;

(vii) Posting benefits to each household's account for regular and supplemental issuances;

(viii) Providing households with access to information on benefit availability;

(ix) Ensuring the privacy of household data and providing benefit and data security;

(x) Inventorying and securing accountable documents; and

(xi) Zeroing out benefit accounts and other account authorization activity.

(2) *Providing food benefits to households.* (i) Verifying the identity of authorized households or authorized household representatives at issuance terminals or POS;

(ii) Verifying the PIN and/or PIN offset, primary account number (PAN), terminal identification number and retailer identification number;

(iii) Determining the sufficiency of the household's account balance in order to debit or credit household benefit accounts at the point of sale;

(iv) Sending messages authorizing or rejecting purchases;

(v) Providing back-up purchase procedures when the system is unavailable;

(vi) Ensuring that benefits are available and carried over from month-to-month.

(vii) Responding to issuance problems in a timely manner.

(3) *Crediting retailers and financial institutions for redeemed benefits.* (i) Verifying electronic transactions flowing to or from participating retailers' bank accounts;

(ii) Creating and maintaining a file containing the individual records of EBT transactions;

(iii) Totaling all credits accumulated by each retailer;

(iv) Providing balance information to retailers or third party processors from individual POS terminals, as needed;

(v) Providing each retailer information on total deposits in the system on a daily basis;

(vi) Preparing a daily tape in a National Automated Clearinghouse format or other process approved by FNS with information on benefits redeemed for each retailer and in summary;

(vii) Transmitting the ACH tape to a financial institution for transmission through the ACH or other method approved by FNS;

(viii) Transferring the information on the ACH tape or other process approved by FNS containing daily redemption activity of each retailer to the FNS Minneapolis Computer Support Center at least once weekly. Transmittal may be by tape, disc, remote job entry or other means acceptable to FNS.

(4) Managing retailer participation in accordance with § 274.3(e).

(b) *Performance and technical standards.* The State agency shall ensure that EBT systems comply with POS technical standards established by the American National Standards Institute (ANSI) or International Organization for Standardization (ISO) where applicable. This includes the draft EBT ISO 8583 Processor Interface Technical Specifications contained in the ANSI standards, which delineates a standard message format for retailers and third parties. In addition, the State agency shall ensure that the EBT system meets performance and technical standards in the areas of system processing speeds, system availability and reliability, system security, system

ease-of-use, minimum card and terminal requirements, performance bonding, and a minimum transaction set. With prior written approval from FNS, the State agency may utilize the prevailing industry performance standards in its region in lieu of those identified in this section. The standards shall be included in all requests for proposals and contracts.

(1) *System processing speeds.* (i) For leased line systems, 98 percent of EBT transactions shall be processed within 10 seconds or less and all EBT transactions shall be processed within 15 seconds. Leased line systems rent telecommunications carriers specifically to connect to the central authorizing computer. For dial-up systems, 95 percent of the EBT transactions shall be processed within 15 seconds or less and all EBT transactions shall be processed within 20 seconds or less. Dial-up systems utilize existing telecommunications lines to dial up and connect to the central computer at the time of the transaction. Processing response time shall be measured at the POS terminal from the time the 'enter' or 'send' key is pressed to the receipt and display of authorization or disapproval information. Third party processors, as defined in paragraph (h)(5) of this section, shall be required by the State agency to comply with the same processing response times required of the primary processor.

(ii) The EBT system shall provide reports, as determined by the State agency, that document transaction processing response time and the number and type of problematic transactions that could not be processed within the standard response time.

(2) *System availability and reliability.* (i) The EBT system central computer shall be available 99.9 percent of scheduled up-time, 24 hours a day, 7 days per week. Scheduled up-time shall mean the time the database is available for transactions excluding scheduled downtime for routine maintenance. The total system, including the system's central computer, any network or intermediate processing facilities and cardholder authorization processors, shall be available 98 percent of scheduled up-time, 24 hours per day, 7 days per week. Scheduled downtime for routine maintenance shall occur during non-peak transaction periods. State certification procedures shall determine whether intermediate processing facilities and cardholder authorization processors are capable of complying with system availability standards prescribed herein prior to permitting the interface with the central computer system.

(ii) The system central computer shall permit no more than 2 inaccurate EBT transactions for every 10,000 EBT transactions processed. The transactions to be included in measuring system accuracy shall include all types of SNAP transactions permitted at POS terminals and processed through the host computer, manual transactions entered into the system, credits to household accounts, and funds transfers to retailer accounts.

(iii) Reconciliation reports and other information regarding problematic transactions shall be made available to the State agency by the system operator, individual retailers, households or financial institutions as appropriate. Reports on problematic transactions, including inaccurate transactions shall be delineated by the source of the problem such as card failure, POS terminal failure, interruption of telecommunications, or other component failure. Errors shall be resolved in a timely manner.

(3) *System security.* As an addition to or component of the Security Program required of Automated Data Processing systems prescribed under §277.18(p) of this chapter, the State agency shall ensure that the following EBT security requirements are established:

(i) Storage and control measures to control blank unissued EBT cards and PINs, and unused or spare POS devices;

(ii) Measures to ensure communication access control. Communication controls shall include the transmission of transaction data and issuance information from POS terminals to workstations and terminals at the data processing center. The following specific security measures shall be included, as appropriate, in the system design documentation, operating procedures or the State agency Security Program:

(A) Computer hardware controls that ensure acceptance of data from authorized terminals only. These controls shall include the use of mechanisms such as retailer identification codes, terminal identifiers and user identification codes, and/or other mechanisms and procedures recognized by the industry;

(B) Software controls, placed at either the terminal or central computer or both, that establish separate control files containing lists of authorized retailers, terminal identifying codes, and user access and identification codes. EBT system software controls shall include separate checks against the control files in order to validate each transaction prior to authorization and limiting the number of unsuccessful PIN attempts that can be made utilizing standard industry practices before the card is deactivated;

(C) Communications network security that utilizes the Data Encryption Standard algorithm to encrypt the PIN, at a minimum, from the point of entry. Other security may include authentication codes and check-sum digits, in combination with data encoded on the magnetic stripe such as the PIN and/or PIN offset, to ensure data security during electronic transmission. Any of the network security measures may be utilized together or separately and may be applied at the terminal or central computer as indicated in the approved system design to ensure communications control;

(D) Manual procedures that provide for secure access to the system with minimal risk to household or retailer accounts. Manual procedures may include the utilization of manager identification codes in obtaining telephonic authorization from the central computer system; requirements for separate entry with audio response unit verification and authorization number; and/or the utilization of 24 hour hotline telephone numbers to authorize transactions.

(iii) Message validation shall include but shall not be limited to:

(A) Message format checks for completeness of the message, correct order of data, existence of control characters, number and size of data fields and appropriate format standards as specified in the approved system design;

(B) Range checks for acceptable date fields, number and valid account numbers, purchase and refund upper limitations in order to prevent and control damage to the system accounts;

(C) Reversal of messages that are not fully processed and recorded.

(iv) Administrative and operational procedures shall ensure that:

(A) Functions affecting an account balance are separated or dually controlled during processing and when requesting Federal reimbursement through a concentrator bank under the provisions of paragraph (i) of this section. These functions may include but are not limited to the set up of accounts, transmittal of funds to and from accounts, access to files to change account records, and transmittal of retailer deposits to the ACH network or other means approved by FNS for crediting retailer bank accounts;

(B) Passwords, identity codes or other security procedures must be utilized by State agency or local personnel and at data processing centers;

(C) Software programming changes shall be dual controlled to the extent possible;

(D) System operations functions shall be segregated from reconciliation duties;

(v) A separate EBT security component shall be incorporated into the State agency Security Program for Automated Data Processing (ADP) systems where appropriate and as prescribed under § 277.18(p) of this chapter. The periodic risk analyses required by the Security Program shall address the following items specific to an EBT system:

(A) EBT system vulnerability to theft and unauthorized use;

(B) Completeness and timeliness of the reconciliation system;

(C) Vulnerability to tampering with or creating household accounts;

(D) Erroneous posting of issuances to household accounts;

(E) Manipulation of retailers' accounts such as creation of false transactions or intrusion by unauthorized computer users;

(F) Capability to monitor systematic abuses at POS terminals such as debits

for a complete allotment, excessive manual issuances, and multiple manual transactions at the same time. Such monitoring may be accomplished through the use of exception reporting;

(G) Tampering with information on the ACH tape or similar information utilized in a crediting method approved by FNS; and,

(H) The availability of a complete audit trail. A complete audit trail shall, at a minimum, be able to provide a complete transaction history of each individual system activity that affects an account balance. The audit trail shall include the tracking of issuances from the Master File and Issuance File, network transactions from POS terminals to EBT central computer database and system file updates.

(vi) The State agency shall incorporate the contingency plan approved by FNS into the Security Program.

(4) *System ease-of-use*. (i) For all system users, the State agency shall ensure that the system:

(A) Minimizes the number of separate steps required to complete a transaction;

(B) Minimizes the number of codes or commands needed to make use of the system;

(C) Makes available clear and comprehensive account balance information with a minimum number of actions necessary;

(D) Provides training and instructions for all system users especially those persons with disabilities;

(E) Makes available prompts on POS terminals or balance only terminals, where appropriate;

(F) Identifies procedures for problem resolution;

(G) Provides reasonable accommodation for the needs of households with disabilities in keeping with the Americans with Disabilities Act of 1990.

(ii) In addition to the requirements of paragraph (h)(4)(i) of this section, the State agency shall ensure that retailers utilizing the EBT system:

(A) Have available manual backup procedures;

(B) Can obtain timely information on daily credits to their banks;

(C) Have available deposit information in a format readily comparable to information maintained in the store; and

(D) Have available instructions on resolving problems with equipment and retailer accounts.

(5) *Minimum card requirements*. (i) The address of the office where a card can be returned if found or no longer in use should be printed on the card.

(ii) FNS reserves the right to require State agencies to place a Department logo on the EBT card and/or sleeves or jackets.

(iii) EBT cards and/or sleeves or jackets shall not contain the name of any State or local official. EBT informational materials shall not indicate association with any political party or other political affiliation.

(iv) State agencies may require the use of a photograph of one or more household members on the card. If the State agency does require the EBT cards to contain a photo, it must establish procedures to ensure that all appropriate household members or authorized representatives are able to access benefits from the account as necessary.

(6) *POS terminals*. POS terminals shall meet the following requirements:

(i) Balance information shall not be displayed on the screen of the POS terminal except for balance-only inquiry terminals;

(ii) PINs shall not be displayed at the terminal; and

(iii) PIN encryption shall occur from the point of entry in a manner which prevents the unsecured transmission between any point in the system.

(7) *Transaction receipts*. Households shall be provided printed receipts at the time of transaction. At a minimum this information shall:

(i) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the SNAP account;

(ii) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(iii) Identify the SNAP households member's account number (the PAN) using a truncated number or coded transaction number. The households' name shall not appear on the receipt except when a signature is required

when utilizing a manual transaction voucher.

(8) *Performance bonding.* The State agency may require a performance bond in accordance with § 277.8 of this chapter or utilize other contractual clauses it deems necessary to enforce the requirements of this section.

(9) *Minimum transaction set.* At a minimum, the State agency shall ensure that the EBT system, including third party processors and retailers driving their own terminals, is capable of providing for authorizing or rejecting purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions. The system must be capable of completing this transaction set across State borders nationwide in accordance with standards specified in paragraph (h)(10) of this section.

(10) *Interoperability.* State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term ''interoperability'' means the EBT system must enable benefits issued in the form of an EBT card to be redeemed in any State. The term ''portability'' means the EBT system must enable benefits issued in the form of an EBT card to be used in any State by a household to purchase food at a retail food store or a wholesale food concern approved under the Food and Nutrition Act of 2008. The standards must include the following:

(i) *EBT system connectivity.* State agencies are responsible for establishing telecommunications links, transaction switching facilities and any other arrangements with other State agencies necessary for the routing of interoperable transactions to such other State EBT authorization systems. State agencies are also responsible for facilitating the settlement of such interoperable transactions and the handling of adjustments. These connections need not be direct connections between State authorization systems but may be facilitated through agreements and linkages with other designated agents or third party processors. All State agencies must agree to the timing and disposition of disputes, error resolution, and adjustments in accordance with Department regulations at § 273.13(a) and § 273.15(k) of this chapter and paragraph (f) of this section. State agencies or their designated agents must draw funds from State SNAP accounts for SNAP benefits transacted by that State's SNAP recipients, regardless of where benefits were transacted.

(ii) *Message format.* Each authorization system must use the ISO 8583 message format, modified for EBT, in a version mutually agreed to between the authorization agent and the party connected for all transactions. Each authorization system must process each financial transaction as a single message financial transaction, except for pre-authorized transactions and reversals, processed as paired transactions.

(iii) *Card Primary Account Number (PAN) Requirements.* Track 2 on each card shall contain the PAN. Each Government entity must obtain an Issuer Identification Number (IIN) from the American Banker's Association (ABA). The IIN should be included as the first six digits of the PAN. The PAN must comply with ISO 7812, Identification Cards—Numbering System and Registration Procedures for Issuer Identifiers. Each State agency must be responsible for generating, updating, and distributing IIN files of all States to each retailer, processor, or acquirer that is directly connected to the State's authorization system. Each terminal operator that uses a routing table for routing acquired transactions must, within 7 calendar days of receiving an IIN routing table update, modify its routing tables to reflect the updated routing information.

(iv) *Third Party Processor requirements.* Each Third Party Processor or terminal operator must have primary responsibility and liability for operating the telecommunications and processing system (including software and hardware) through which transactions initiated at POS terminals it owns, operates, controls or for which it has signed an agreement to accept EBT transactions, are processed and routed, directly or indirectly, to the appropriate State authorization system. Each terminal operator must maintain the necessary computer hardware and software to interface either directly with a

State authorization system or with a third party service provider to obtain access to one or more State authorization systems. Each terminal operator must also establish a direct or indirect telecommunications connection for the routing of transactions to the State authorization system or to a processor directly or indirectly connected to the State authorization system.

(v) *REDE File*. The State agency must ensure that their EBT system verifies FNS retailer numbers for all interstate transactions against the National REDE file of all FNS EBT retailers to validate these transactions.

(c) *Concentrator bank responsibilities*. The concentrator bank shall be a Federally-insured financial institution or other entity acceptable to the Federal Reserve which has the capability to take retailer credits and/or debits, obtained from the EBT system operator, and transmit them to the ACH network operated by the Federal Reserve or through another process for crediting retailers approved by FNS. Transmittal shall be by tape or on-line in a format suitable for the ACH or as approved by FNS.

(1) The minimum functions of the concentrator bank are:

(i) Preparing a daily ACH tape or other crediting process approved by FNS with information on benefits redeemed and creditable to each retailer;

(ii) Transferring the ACH tape or other crediting process approved by FNS to the Federal Reserve or other entity approved by FNS;

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account through the ASAP system or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for SNAP redemptions provided the entity is acceptable to FNS and U.S. Treasury;

(iv) Cooperating in the reconciliation of discrepancies and error resolution when necessary.

(2) With the approval of FNS, another procedure, other than the ACH system, may be utilized to credit retailer accounts and/or debit FNS' account, if it meets the needs of FNS and the EBT system.

(3) The State agency shall be liable for any errors in the creation of the ACH tape or its transmission. The State agency may transfer the liability associated with creation of the ACH tape, its transmission or another crediting process approved by FNS as appropriate to the EBT system operator or the concentrator bank. Appropriate system security administrative and operational procedures shall be instituted in accordance with paragraph (h)(3) of this section.

(d) *Re-presentation*. The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible.

(1) Under certain circumstances, when a manual transaction occurs due to the inaccessibility of the host computer and the transaction is rejected because insufficient funds are available in a household's account, the State agency may permit the re-presentation of the transaction during subsequent months. At the State agency's option, re-presentation may be permitted within the EBT system as follows:

(i) Re-presentation of manual vouchers when there are insufficient funds in the EBT account to cover the manual transaction may be permitted only under the following circumstances:

(A) The manual transaction occurred because the host computer was down and authorization was obtained by the retailer for the transaction; or

(B) The manual transaction occurred because telephone lines were down.

(ii) Re-presentation of manual vouchers shall not be permitted when the EBT card, magnetic stripe, PIN pad, card reader, or POS terminal fails and telephone lines are operational. Manual transactions shall not be utilized to extend credit to a household via re-presentation when the household's account balance is insufficient to cover the planned purchase.

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in either of two ways:

(A) Any amount which equals at least $10 or up to 10 percent of the transaction. This amount will be deducted monthly until the total balance owed is paid-in-full. State agencies

may opt to re-present at a level that is less than the 10 percent maximum, however, this lesser amount must be applied to all households.

(B) $50 in the first month and the greater of $10 or 10 percent of the allotment in subsequent months until the total balance owed is paid-in-full. If the monthly allotment is less than $50, the State shall debit the account for $10.

(2) The State agency shall establish procedures for determining the validity of each re-presentation and subsequent procedures authorizing a debit from a household's monthly benefit allotment. The State agency may ask households to voluntarily pay the amount of a represented transaction or arrange for a faster schedule of payment than identified in paragraph (d)(1)(iii) of this section.

(3) The State agency shall ensure that retailers provide notice to households at the time of the manual transaction that re-presentation may occur if there are insufficient benefits in the account to cover the transaction. The statement shall be printed on the paper voucher or on a separate sheet of paper. The State agency shall also provide notice to the household prior to the month when a benefit allotment is reduced when a re-presentation is necessary. Notice shall be provided to the household for each insufficient transaction that is to be re-presented in a future month. The notice shall be provided prior to the month it occurs and shall state the amount of the reduction in the benefit allotment.

(4) The Department shall not accept liability under any circumstances for the overissuance of benefits due to the utilization of manual vouchers, including those situations when the host computer is inaccessible or telecommunications lines are not functioning. However, the State agency, in consultation with authorized retailers and with the mutual agreement of the State agency's vendor, if any, may accept liability for manual purchases within a specified dollar limit. Costs associated with liabilities accepted by the State agency shall not be reimbursable.

(5) The State agency shall be strictly liable for manual transactions that result in excess deductions from a household's account.

(e) *Store-and-forward.* As an alternative to manual transactions:

(1) State agencies may opt to allow retailers, at the retailer's own choice and liability, to perform store-and-forward transactions when the EBT system cannot be accessed for any reason. The retailer may forward the transaction to the host one time within 24 hours of when the system again becomes available. Should the 24-hour window cross into the beginning of a new benefit issuance period, retailers may draw against all available benefits in the account.

(2) State agencies may also opt, in instances where there are insufficient funds to authorize an otherwise approvable store-and-forward transaction, to allow the retailer to collect the balance remaining in the client's account, in accordance with the requirements detailed in this section.

(i) State Agencies may elect to allow store-and-forward to provide remaining balances to retailers as follows:

(A) The EBT processor may provide partial approval of the store-and-forward transaction, crediting the retailer with the balance remaining in the account through a one-step process;

(B) The transaction should be in accordance with the standard message format requirements for store and forward; and

(C) Re-presentation, as described in paragraph (d) of this section, to obtain the uncollected balance from current or future months' benefits shall not be allowed for store-and-forward transactions.

(ii) In States that elect not to give retailers the option described in this paragraph, all store-and-forward transactions with insufficient funds will be denied in full.

PART 275—PERFORMANCE REPORTING SYSTEM

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AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 275 are contained in § 271.8.

Subpart A—Administration

§ 275.1 General scope and purpose.

Under the Food Stamp Act, each State agency is responsible for the administration of the Food Stamp Program in accordance with the Act, Regulations, and the State agency's plan of operation. To fulfill the requirements of the Act, each State agency shall have a system for monitoring and improving its administration of the program. The State agency is also responsible for reporting on its administration to FNS. These reports shall identify program deficiencies and the specific administrative action proposed to meet the program requirements established by the Secretary. If it is determined, however, that a State has failed without good cause to meet any of the program requirements established by the Secretary, or has failed to carry out the approved State plan of operation, the Department shall suspend and/or disallow from the State such funds as are determined to be appropriate in accordance with part 276 of this chapter.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3407, Feb. 4, 1987; Amdt. 328, 56 FR 60051, Nov. 27, 1991; 75 FR 33436, June 11, 2010]

§ 275.2 State agency responsibilities.

(a) *Establishment of the performance reporting system.* (1) The State agency shall establish a continuing performance reporting system to monitor program administration and program operations. The method for establishing each component of the system is identified and explained in subparts B through F of this part. The components of the State agency's performance reporting system shall be:

(i) Data collection through management evaluation (ME) reviews and quality control (QC) reviews;

(ii) Analysis and evaluation of data from all sources;

(iii) Corrective action planning;

(iv) Corrective action implementation and monitoring; and

(v) Reporting to FNS on program performance.

(2) The State agency must ensure corrective action is effected at the State and project area levels.

(b) *Staffing standards.* The State agency shall employ sufficient State level staff to perform all aspects of the Performance Reporting System as required in this part of the regulations. The staff used to conduct QC reviews shall not have prior knowledge of either the household or the decision under review. Where there is prior knowledge, the reviewer must disqualify her/himself. Prior knowledge is defined as having:

(1) Taken any part in the decision that has been made in the case; (2) any discussion of the case with staff who participated in the decision; or (3) any personal knowledge of or acquaintance with persons in the case itself. To ensure no prior knowledge on the part of

QC or ME reviewers, local project area staff shall not be used to conduct QC or ME reviews; exceptions to this requirement concerning local level staff may be granted with prior approval from FNS. However, local personnel shall not, under any circumstances, participate in ME reviews of their own project areas.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3407, Feb. 4, 1987]

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the review described in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conduction of these reviews to reduce the frequency of entry into the State agency. FNS regional offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. FNS shall notify the State agency of any deficiencies detected in program or system operations. Any deficiencies detected in program or system operations which do not necessitate long range analytical and evaluative measures for corrective action development shall be immediately corrected by the State agency. Within 60 days of receipt of the findings of each review established below, State agencies shall develop corrective action addressing all other deficiencies detected in either program or system operations and shall ensure that the State agency's own corrective action plan is amended and that FNS is provided this information at the time of the next formal semiannual update to the State agency's Corrective Action Plan, as required in § 275.17.

(a) *Reviews of State Agency's Administration/Operation of the Food Stamp Program.* FNS shall conduct an annual review of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

(b) *Reviews of State Agency's Management Evaluation System.* FNS will review each State agency's management evaluation system on a biennial basis; however, FNS may review a State agency's management evaluation system on a more frequent basis if a regular review reveals serious deficiencies in the ME system. The ME review will include but not be limited to a determination of whether or not the State agency is complying with FNS regulations, an assessment of the State agency's methods and procedures for conducting ME reviews, and an assessment of the data collected by the State agency in conducting the reviews.

(c) *Validation of State Agency error rates.* FNS shall validate each State agency's payment error rate, as described in § 275.23(c), during each annual quality control review period. Federal validation reviews shall be conducted by reviewing against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions. FNS shall validate each State agency's reported negative error rate. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.23(d)(4).

(1) *Payment error rate.* The validation review of each State agency's payment error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n′)
31,489 and over	n′=400
10,001 to 31,488	n′=.011634 N+33.66
10,000 and under	n′=150

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n′)
60,000 and over	n′=400
10,001 to 59,999	n′=.005 N+100
10,000 and under	n′=150

(C) In the above formula, n' is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(*2*) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(D) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(E) In the above formula, N is the State agency's minimum active case sample size as determined in accordance with § 275.11(b)(1).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine the accuracy of the State agency's findings using the household's certification records and the State agency's QC records as the basis of determination. The FNS Regional Office may choose to verify any aspects of a State agency's QC findings through telephone interviews with participants or collateral contacts. In addition, the FNS Regional Office may choose to conduct field investigations to the extent necessary.

(iii) Upon the request of a State agency, the appropriate FNS Regional Office will assist the State agency in completing active cases reported as not completed due to household refusal to cooperate.

(iv) FNS will also review the State agency's sampling procedures, estimation procedures, and the State agency's system for data management to ensure compliance with §§ 275.11 and 275.12.

(v) FNS validation reviews of the State agency's active sample cases will be conducted on an ongoing basis as the State agency reports the findings for individual cases and supplies the necessary case records. FNS will begin the remainder of each State agency's validation review as soon as possible after the State agency has supplied the necessary information regarding its sample and review activity.

(2) *Underissuance error rate*. The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's payment error rate as outlined in paragraph (c)(1) of this section.

(3) *Negative case error rate*. The validation review of each State agency's negative case error rate shall consist of the following actions:

(i) FNS will select a subsample of a State agency's completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n′)
5,000 and over	n′=160
501 to 4,999	n′=.0188 N+65.7
Under 500	n′=75

(A) In the above formula, n' is the minimum number of Federal review sample cases which must be selected when conducting a validation review, except that FNS may select a lower number of sample cases if:

(*1*) The State agency does not report a change in sampling procedures associated with a revision in its required sample size within 10 days of effecting the change; and/or

(*2*) The State agency does not complete the number of case reviews specified in its approved sampling plan.

(B) The reduction in the number of Federal cases selected will be equal to the number of cases that would have been selected had the Federal sampling interval been applied to the State agency's shortfall in its required sample size. This number may not be exact due to random starts and rounding.

(C) In the above formula, N is the State agency's minimum negative case sample size as determined in accordance with § 275.11(b)(2).

(ii) FNS Regional Offices will conduct case record reviews to the extent necessary to determine whether the

household case record contained sufficient documentation to justify the State agency's QC findings of the correctness of the State agency's decision to deny, suspend or terminate a household's participation.

(iii) FNS will also review each State agency's negative case sampling and review procedures against the provisions of §§ 275.11 and 275.13.

(iv) FNS will begin each State agency's negative sample case validation review as soon as possible after the State agency has supplied the necessary information, including case records and information regarding its sample and review activity.

(4) *Arbitration.* (i) Whenever the State agency disagrees with the FNS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis by an FNS Arbitrator, subject to the following limitations.

(A) The State agency may only request arbitration when the State agency's and FNS regional office's findings or disposition of an individual QC case disagree.

(B) The arbitration review shall be limited to the point(s) within the Federal findings or disposition that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computational sheet, the arbitration shall correct the error while calculating the allotment.

(ii) The FNS Arbitrator(s) shall be an individual or individuals who are not directly involved in the validation effort.

(iii) With the exception of the restrictions contained in paragraph (c)(4)(iii), for an arbitration request to be considered, it must be received by the appropriate FNS regional office within 20 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period shall run to the end of the next work day. The State agency shall be restricted in its eligibility to request arbitration of an individual case if that case was not disposed of and the findings reported in accordance with the timeframes specified in § 275.21(b)(2). For each day late that a case was disposed of and the findings reported, the State agency shall have one less day to request arbitration of the case.

(iv) When the State agency requests arbitration, it shall submit all required documentation to the appropriate FNS regional office addressed to the attention of the FNS Arbitrator. The FNS regional office QC staff may submit an explanation of the Federal position regarding a case to the FNS Arbitrator.

(A) A complete request is one that contains all information necessary for the arbitrator to render an accurate, timely decision.

(B) If the State agency's request is not complete the arbitrator shall make a decision based solely on the available documents.

(v) The FNS Arbitrator shall have 20 calendar days from the date of receipt of a State agency's request for arbitration to review the case and make a decision.

(5) *Household cooperation.* Households are required to cooperate with Federal QC reviewers. Refusal to cooperate shall result in termination of the household's eligibility. The Federal reviewer shall follow the procedures in § 275.12(g)(1)(ii) in order to determine whether a household is refusing to cooperate with the Federal QC reviewer. If the Federal reviewer determines that the household has refused to cooperate, as opposed to failed to cooperate, the household shall be reported to the State agency for termination of eligibility.

(d) *Assessment of Corrective Action.* (1) FNS will conduct will conduct a comprehensive annual assessment of a State agency's corrective action process by compiling all information relative to that State agency's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit corrective action plan; the State agency is

implementing corrective actions according to the appropriate plan; target completion dates for reduction or elimination of deficiencies are being met; and, corrective actions are effective. In addition, FNS will examine the State agency's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices, as necessary.

(2) In addition, FNS will conduct on-site reviews of selected corrective actions as frequently as considered necessary to ensure that State agencies are implementing proposed corrective actions within the timeframes specified in the State agency and/or Project Area/Management Unit corrective action plans and to determine the effectiveness of the corrective action. The on-site reviews will provide State agencies and FNS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 260, 49 FR 6303, Feb. 17, 1984; Amdt. 266, 52 FR 3407, Feb. 4, 1987; 53 FR 1604, Jan. 21, 1988; 54 FR 23951, June 5, 1989; Amdt. 309, 55 FR 1672, Jan. 18, 1990; Amdt. 328, 56 FR 60051, Nov. 27, 1991; Amdt. 366, 62 FR 29658, June 2, 1997; Amdt. 373, 64 FR 38294, July 16, 1999; 68 FR 59523, Oct. 16, 2003; 75 FR 33436, June 11, 2010]

§ 275.4 Record retention.

(a) The State agency shall maintain Performance Reporting System records to permit ready access to, and use of, these records. Performance Reporting System records include information used in data analysis and evalution, corrective action plans, corrective action monitoring records in addition to ME review records and QC review records as explained in paragraphs (b) and (c) of this section. To be readily accessible, system records shall be retained and filed in an orderly fashion. Precautions should be taken to ensure that these records are retained without loss or destruction for the 3-year period required by these regulations. Information obtained on individual households for Performance Reporting System purposes shall be safeguarded in accordance with FNS policies on disclosure of information for the Food Stamp Program.

(b) ME review records consist of thorough documentation of review findings, sources from which information was obtained, procedures used to review Food Stamp Program requirements including sampling techniques and lists, and ME review plans. The State agency must submit documented evidence of review findings to the FNS Regional Office upon request for purposes of evaluating State corrective action plans.

(c) QC review records consist of Forms FNS–380, Worksheet for Supplemental Nutrition Assistance Program, FNS–380–1, Quality Control Review Schedule , FNS–245, Negative Quality Control Review Schedule; other materials supporting the review decision; sample lists; sampling frames; tabulation sheets; and reports of the results of all quality control reviews during each review period.

[Amdt. 160, 45 FR 15898, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6304, Feb. 17, 1984; Amdt. 262, 49 FR 50597, Dec. 31, 1984; 75 FR 33436, June 11, 2010]

Subpart B—Management Evaluation (ME) Reviews

§ 275.5 Scope and purpose.

(a) *Objectives*. Each State agency shall ensure that project areas operate the Food Stamp Program in accordance with the Act, regulations, and FNS-approved State Plan of Operation. To ensure compliance with program requirements, ME reviews shall be conducted to measure compliance with the provisions of FNS regulations. The objectives of an ME review are to:

(1) Provide a systematic method of monitoring and assessing program operations in the project areas;

(2) Provide a basis for project areas to improve and strengthen program operations by identifying and correcting deficiencies; and

(3) Provide a continuing flow of information between the project areas, the States, and FNS, necessary to develop the solutions to problems in program policy and procedures.

(b) *Frequency of review*. (1) State agencies shall conduct a review once

every year for large project areas, once every two years for medium project areas, and once every three years for small project areas, unless an alternate schedule is approved by FNS. The most current and accurate information on active monthly caseload available at the time the review schedule is developed shall be used to determine project area size.

(2) A request for an alternate review schedule shall be submitted for approval in writing with a proposed schedule and justification. In any alternate schedule, each project area must be reviewed at least once every three years. Approval of an alternate schedule is dependent upon a State agency's justification that the project areas that will be reviewed less frequently than required in paragraph (b)(1) of this section are performing adequately and that previous reviews indicate few problems or that known problems have been corrected. FNS retains the authority for approving any alternate schedule and may approve a schedule in whole or in part. Until FNS approval of an alternate schedule is obtained, the State agency shall conduct reviews in accordance with paragraph (b)(1) of this section.

(3) FNS may require the State agency to conduct additional on-site reviews when a serious problem is detected in a project area which could result in a substantial dollar or service loss.

(4) State agencies shall also establish a system for monitoring those project areas' operations which experience a significant influx of migratory workers during such migrations. This requirement may be satisfied by either scheduling ME reviews to coincide with such migrations or by conducting special reviews. As part of the review the State agency shall contact local migrant councils, advocate groups, or other organizations in the project area to ensure that migrants are receiving the required services.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980, as amended by Amdt. 262, 49 FR 50597, Dec. 31, 1984; Amdt. 266, 52 FR 3408, Feb. 4, 1987]

§ 275.6 Management units.

(a) *Establishment of management units.* For the purpose of ME reviews, State agencies may, subject to FNS approval, establish ''management units'' which are different from project areas designated by FNS for participation in the program. For example, State-established welfare districts, regions or other administrative structures within a State may be so designated. Management units can be designated as either large, medium, or small for purposes of frequency of review. However, establishment of management units solely for the purpose of reducing the frequency of review will not be approved by FNS.

(b) *FNS approval of management units.* State agencies shall submit requests for establishment of management units to FNS, which shall have final authority for approval of such units as well as any changes in those previously approved by FNS.

(1) The following minimum criteria must be met prior to requesting FNS approval:

(i) The proposed management unit must correspond with existing State-established welfare districts, regions, or other administrative structures; and

(ii) The unit must have supervisory control over Food Stamp Program operations within that geographic area and have authority for implementation of corrective action.

(2) In submitting the request for FNS approval, the State agency shall include the following information regarding the proposed management unit:

(i) That the proposed management unit meets the minimum criteria described in paragraphs (b)(1) (i) and (ii) of this section;

(ii) Geographic coverage, including the names of the counties/project areas within the unit and the identification (district or region number) and location (city) of the office which has supervisory control over the management unit;

(iii) Food Stamp Program participation, including the number of persons and number of households;

(iv) The number of certification offices;

(v) The number of issuance units;

(vi) The dollar value of allotments issued as reflected in the most recent available data; and

(vii) Any other relevant information.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 23637, Apr. 8, 1980, as amended by Amdt. 266, 52 FR 3408, Feb. 4, 1987]

§ 275.7 Selection of sub-units for review.

(a) *Definition of sub-units.* Sub-units are the physical locations of organizational entities within project areas responsible for operating various aspects of the Food Stamp Program, exclusive of Post Offices which may issue coupons. Sub-units shall be classified based upon functional responsibility as one or more of the following.

(1) *Certification office.* Any sub-unit which has the responsibility for accepting applications, conducting interviews, determining eligibility, maintaining (or having easy access to) casefiles, and transmitting information to the data management unit shall be designated as a certification office.

(2) *Issuance office.* Any sub-unit which has the responsibility for issuing coupons to participating households and storing coupons shall be designated as an issuance office.

(3) *Data management unit (DMU).* Any sub-unit which has the responsibility for maintaining the household issuance record (HIR) masterfile shall be designated as a DMU.

(4) *Bulk storage point.* Any sub-unit which has the responsibility for accepting and storing supplies of coupons prior to shipment to issuance sites shall be designated as a bulk storage point.

(5) *Reporting point.* Any sub-unit which has the responsibility for preparation and submittal of Form FNS–250 for more than one issuance unit shall be designated as a reporting point, regardless of whether or not the unit actually issues coupons.

(b) *Reviewing Issuance Offices and Bulk Storage Points.* The issuance office and bulk storage point review required by § 274.1(c)(2) of this chapter may be satisfied through the ME review system.

(c) *Combined responsibilities.* (1) When a sub-unit has more than one of the areas of functional responsibility specified in paragraph (a) of this section, it shall be included in each applicable classification and if selected for review, all functions performed shall be examined. For example, if a sub-unit has an organizational entity which certifies households and also has an entity which regularly issues coupons, the sub-unit shall be designated as both a certification and an issuance office. Thus, in an HIR issuance system, sub-units designated as issuance offices would usually also be designated as DMU's since the HIR masterfile is usually maintained at the issuance site in this system.

(2) Certain sub-units shall not be designated as having combined responsibilities, even though they may perform certain functions related to more than one of the areas. For example, coupon issuers must maintain a level of coupon inventory to ensure that participants' needs are met on a daily basis but do not supply other issuance sites with bulk supplies of coupons. Such a sub-unit would not be classified as a bulk storage point. Certification offices may issue coupons in emergency situations or to meet the requirements of expedited service but do not routinely issue coupons to households under standard certifications. In these and similar situations, the sub-unit would be classified based upon its primary function exclusively. However, when any sub-unit is selected, all program requirements specified in § 275.8 which the sub-unit has responsibility for, shall be reviewed.

(d) *Itinerant issuance and certification points.* Units which certify households and/or issue coupons as satellites of a central sub-unit shall not be classified as independent sub-units. Units may be identified as itinerant when they do not operate on a regular basis, retain certification records, store coupons, transmit information directly to the DMU and/or develop FNS–250 reports independently. Examples of such units include mobile units, short term or seasonal operations, and units which may operate on a regular basis but do not meet the criteria for a sub-unit described in paragraph (a) of this section. However, when a sub-unit is selected for review which acts as a parent unit for itinerant service points, at least one itinerant point per sub-unit shall be reviewed if operational at the time of the review.

(e) *Selection of Sub-units for Review.* State agencies shall select a representative number of sub-units of each category for on-site review in order to determine a project area's compliance with program standards.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 23638, Apr. 8, 1980; 45 FR 46784, July 11, 1980, as amended by Amdt. 266, 52 FR 3408, Feb. 4, 1987]

§ 275.8 Review coverage.

(a) During each review period, State agencies shall review the national target areas of program operation specified by FNS. FNS will notify State agencies of the minimum program areas to be reviewed at least 90 days before the beginning of each annual review period, which is the Federal fiscal year. FNS may add additional areas during the review period if deemed necessary. The FNS headquarters office will add national target areas during the review period only for deficiencies of national scope. State agencies have 60 days in which to establish a plan schedule for such reviews.

(b) State agencies shall be responsible for reviewing each national target area or other program requirement based upon the provisions of the regulations governing the Food Stamp Program and the FNS-approved Plan of Operation. If FNS approves a State agency's request for a waiver from a program requirement, any different policy approved by FNS would also be reviewed. When, in the course of a review, a project area is found to be out of compliance with a given program requirement, the State agency shall identify the specifics of the problem including: the extent of the deficiency, the cause of the deficiency, and, as applicable, the specific procedural requirements the project area is misapplying.

[Amdt. 266, 52 FR 3408, Feb. 4, 1987, as amended by Amdt. 356, 59 FR 29713, June 9, 1994]

§ 275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements specified for review in § 275.8 of this part using procedures that are adequate to identify problems and the causes of those problems. As each project area's operational structure will differ, State agencies shall review each program requirement applicable to the project area in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME review. This review plan shall specify whether each project area is large, medium, or small and shall contain:

(i) Identification of the project area to be reviewed, program areas to be reviewed, the dates the review will be conducted, and the period of time that the review will cover;

(ii) Information secured from the project area regarding its caseload and organization;

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the techniques used to select them;

(iv) Identification of whether the State agency is using the ME review to monitor coupon issuers and bulk storage points as discussed § 274.1(c)(2). At State agency option it may also indicate whether the State agency is using the ME review process to perform nondiscrimination reviews; and

(v) A description of the review method(s) the State agency plans to use for each program area being reviewed.

(2) ME review plans shall be maintained in an orderly fashion and be made available to FNS upon request.

(c) *Review methods.* (1) State agenices shall determine the method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine if the project area is in compliance with program requirements. The procedures used shall be adequate to identify any problems and the causes of those problems.

(2) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

(d) *Review worksheet.* (1) State agencies shall use a review worksheet to

record all review findings. For each sub-unit reviewed the State agency shall, on the worksheet, identify:

(i) The sub-unit being reviewed;

(ii) Each program requirement reviewed in the sub-unit;

(iii) The method used to review each program requirement;

(iv) A description of any deficiency detected;

(v) The cause(s) of any deficiency detected, if known;

(vi) The number of casefiles and/or program records selected and examined within the sub-unit, identification of those selected (record case number, household name, etc.), the proportion which were not subject to review, as well as the method used to select the sample;

(vii) Where applicable, the numerical extent of any deficiency detected through examination of program records; and

(viii) Any pertinent comments concerning the sub-unit's operation.

(2) State agencies shall promptly forward review findings to the appropriate State office for analysis, evaluation, and corrective action planning. Review worksheets shall be retained in an orderly fashion and made available to FNS upon request.

[Amdt. 160, 45 FR 15900, Mar. 11, 1980; 45 FR 25375, Apr. 15, 1980, as amended by Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 356, 59 FR 29713, June 9, 1994]

Subpart C—Quality Control (QC) Reviews

§ 275.10 Scope and purpose.

(a) As part of the Performance Reporting System, each State agency is responsible for conducting quality control reviews. For food stamp quality control reviews, a sample of households shall be selected from two different categories: Households which are participating in the Food Stamp Program (called active cases) and households for which participation was denied, suspended or terminated (called negative cases). Reviews shall be conducted on active cases to determine if households are eligible and receiving the correct allotment of food stamps. The determination of whether the household received the correct allotment will be made by comparing the eligibility data gathered during the review against the amount authorized on the master issuance file. Reviews of negative cases shall be conducted to determine whether the State agency's decision to deny, suspend or terminate the household, as of the review date, was correct. Quality control reviews measure the validity of food stamp cases at a given time (the review date) by reviewing against the Food Stamp Program standards established in the Food Stamp Act and the Regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS and the State agency shall analyze findings of the reviews to determine the incidence and dollar amounts of errors, which will determine the State agency's liability for payment errors in accordance with the Food Stamp Act of 1977, as amended, and to plan corrective action to reduce excessive levels of errors for any State agency.

(b) The objectives of quality control reviews are to provide:

(1) A systematic method of measuring the validity of the food stamp caseload;

(2) A basis for determining error rates;

(3) A timely continuous flow of information on which to base corrective action at all levels of administration; and

(4) A basis for establishing State agency liability for errors that exceed the National performance measure.

(c) The review process is the activity necessary to complete reviews and document findings of all cases selected in the sample for quality control reviews. The review process shall consist of:

(1) Case assignment and completion monitoring;

(2) Case reviews;

(3) Supervisory review of completed worksheets and schedules; and

(4) Transmission of completed worksheets and schedules to the State agency for centralized data compilation and analysis.

[Amdt. 149, 44 FR 45893, Aug. 3, 1979, as amended by Amdt. 260, 49 FR 6304, Feb. 17, 1984; 54 FR 7016, Feb. 15, 1989; Amdt. 328, 56 FR 60051, Nov. 27, 1991; Amdt. 373, 64 FR 38294, July 16, 1999; 75 FR 33436, June 11, 2010]

§ 275.11 Sampling.

(a) *Sampling plan.* Each State agency shall develop a quality control sampling plan which demonstrates the integrity of its sampling procedures.

(1) *Content.* The sampling plan shall include a complete description of the frame, the method of sample selection, and methods for estimating characteristics of the population and their sampling errors. The description of the sample frames shall include: source, availability, accuracy, completeness, components, location, form, frequency of updates, deletion of cases not subject to review, and structure. The description of the methods of sample selection shall include procedures for: estimating caseload size, overpull, computation of sampling intervals and random starts (if any), stratification or clustering (if any), identifying sample cases, correcting over-or undersampling, and monitoring sample selection and assignment. A time schedule for each step in the sampling procedures shall be included.

(2) *Criteria.* Sampling plans proposing non-proportional or other alternative designs shall document compliance with the approval criteria in paragraph (b)(4) of this section. All sampling plans shall:

(i) Conform to principles of probability sampling;

(ii) Specify and explain the basis for the sample sizes chosen by the State agency;

(iii) If the State agency has chosen an active sample size as specified in paragraph (b)(1)(iii) of this section, include a statement that, whether or not the sample size is increased to reflect an increase in participation as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(iv) If the State agency has chosen a negative sample size as specified in paragraph (b)(2)(ii) of this section, include a statement that, whether or not the sample size is increased to reflect an increase in negative actions as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FNS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation. Whatever the design, it must conform to commonly acceptable statistical theory and application (see paragraph (b)(4) of this section).

(4) *FNS review and approval.* The State agency shall submit its sampling plan to FNS for approval as a part of its State Plan of Operation in accordance with § 272.2(e)(4). In addition, all sampling procedures used by the State agency, including frame composition, construction, and content shall be fully documented and available for review by FNS.

(b) *Sample size.* There are two samples for the food stamp quality control review process, an active case sample and a negative case sample. The size of both these samples is based on the State agency's average monthly caseload during the annual review period. Costs associated with a State agency's sample sizes are reimbursable as specified in § 277.4.

(1) *Active cases.* (i) All active cases shall be selected in accordance with standard procedures, and the review findings shall be included in the calculation of the State agency's payment error rate.

(ii) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(1)(iii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iii) of this section, the minimum number of active cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=2400
10,000 to 59,999	n=300+[0.042(N − 10,000)]
Under 10,000	n=300

(iii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iii) of this section may determine the minimum number of active cases to be selected and reviewed during each annual review period as follows:

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=1020
12,942 to 59,999	n=300+[0.0153(N − 12,941)]
Under 12,942	n=300

(iv) In the formulas in paragraphs (b)(1)(ii) and (iii) of this section n is the required active case sample size. This is the minimum number of active cases subject to review which must be selected each review period. Also in the formulas, N is the average monthly participating caseload subject to quality control review (i.e., households which are included in the active universe defined in paragraph (e)(1) of this section) during the annual review period.

(2) *Negative cases*. (i) Unless a State agency chooses to select and review a number of negative cases determined by the formulas provided in paragraph (b)(2)(ii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iv) of this section, the minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=800
500 to 4,999	n=150+[0.144(N − 500)]
Under 500	n=150

(ii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iv) of this section may determine the minimum number of negative cases to be selected and reviewed during each annual review period as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=680
684 to 4,999	n=150+[0.1224(N − 683)]
Under 684	n=150

(iii) In the formulas in this paragraph (b)(2), n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(iv) In the formulas in this paragraph (b)(2), N is the average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes*. Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. FNS shall not penalize a State agency that does not adjust its sample size if the actual caseload during a review period is less than 20 percent larger than the estimated caseload initially used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

(4) *Alternative designs*. The active and negative sample size determinations assume that State agencies will use a systematic or simple random sample design. State agencies able to obtain results of equivalent reliability with smaller samples and appropriate design may use an alternative design with FNS approval. To receive FNS approval, proposals for any type of alternative design must:

(i) Demonstrate that the alternative design provides payment error rate estimates with equal-or-better predicted precision than would be obtained had the State agency reviewed simple random samples of the sizes specified in paragraphs (b)(1) and (b)(2) of this section.

(ii) Describe all weighting, and estimation procedures if the sample design is non-self-weighted, or uses a sampling technique other than systematic sampling.

(iii) Demonstrate that self-weighting is actually achieved in sample designs claimed to be self-weighting.

(c) *Sample selection.* The selection of cases for quality control review shall be made separately for active and negative cases each month during the annual review period. Each month each State agency shall select for review approximately one-twelfth of its required sample, unless FNS has approved other numbers of cases specified in the sampling plan.

(1) *Substitutions.* Once a household has been identified for inclusion in the sample by a predesigned sampling procedure, substitutions are not acceptable. An active case must be reviewed each time it is selected for the sample. If a household is selected more than once for the negative sample as the result of separate and distinct instances of denial, suspension or termination, it shall be reviewed each time.

(2) *Corrections.* Excessive undersampling must be corrected during the annual review period. Excessive oversampling may be corrected at the State agency's option. Cases which are dropped to compensate for oversampling shall be reported as not subject to review. Because corrections must not bias the sample results, cases which are dropped to compensate for oversampling must comprise a random subsample of all cases selected (including those completed, not completed, and not subject to review). Cases which are added to the sample to compensate for undersampling must be randomly selected from the entire frame in accordance with the procedures specified in paragraphs (b), (c)(1), and (e) of this section. All sample adjustments must be fully documented and available for review by FNS.

(d) *Required sample size.* A State agency's required sample size is the larger of either the number of cases selected which are subject to review or the number of cases chosen for selection and review according to paragraph (b) of this section.

(e) *Sample frame.* The State agency shall select cases for quality control review from a sample frame. The choice of a sampling frame shall depend upon the criteria of timeliness, completeness, accuracy, and administrative burden. Complete coverage of the sample universes, as defined in paragraph (f) of this section, must be assured so that every household subject to quality control review has an equal or known chance of being selected in the sample. Since the food stamp quality control review process requires an active and negative sample, two corresponding sample frames are also required.

(1) *Active cases.* The frame for active cases shall list all households which were: (i) Certified prior to, or during, the sample month; and (ii) issued benefits for the sample month, except for those households excluded from the universe in paragraph (f)(1) of this section. State agencies may elect to use either a list of certified eligible households or a list of households issued an allotment. If the State agency uses a list of certified eligible households, those households which are issued benefits for the sample month after the frame has been compiled shall be included in a supplemental list. If the State agency uses an issuance list, the State agency shall ensure that the list includes those households which do not actually receive an allotment because the entire amount is recovered for repayment of an overissuance in accordance with the allotment reduction procedures in § 273.18.

(2) *Negative cases.* The frame for negative cases shall list:

(i) All actions to deny an application in the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) All actions to suspend or terminate a household in the sample month except those excluded from the universe in paragraph (f)(2) of this section. Each action to suspend or terminate a household in the sample month shall be listed separately in the sample frame.

(3) *Unwanted cases.* A frame may include cases for which information is not desired (e.g., households which have been certified but did not actually participate during the sample month). When such cases cannot be eliminated

from the frame beforehand and are selected for the sample, they must be accounted for and reported as being not subject to review in accordance with the provisions in §§275.12(g) and 275.13(e).

(f) *Sample universe*. The State agency shall ensure that its active and negative case frames accurately reflect their sample universes. There are two sample universes for the food stamp quality control review process, an active case universe and a negative case universe. The exceptions noted below for both universes are households not usually amenable to quality control review.

(1) *Active cases*. The universe for active cases shall include all households certified prior to, or during, the sample month and receiving food stamps for the sample month, except for the following:

(i) A household in which all the members had died or had moved out of the State before the review could be undertaken or completed;

(ii) A household receiving food stamps under a disaster certification authorized by FNS;

(iii) A household which is under investigation for intentional Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing; or

(v) A household receiving restored benefits in accordance with §273.17 but not participating based upon an approved application. Other households excluded from the active case universe during the review process are identified in §275.12(g).

(2) *Negative cases*. The universe for negative cases shall include all actions taken to deny, suspend, or terminate a household in the sample month except the following:

(i) A household which had its case closed due to expiration of the certification period;

(ii) A household denied food stamps under a disaster certification authorized by FNS;

(iii) A household which withdrew an application prior to the agency's determination;

(iv) A household which is under active investigation for Intentional Program Violation;

(v) A household which has been sent a notice of pending status but which was not actually denied participation;

(vi) A household which was terminated for failure to file a complete monthly report by the extended filing date, but reinstated when it subsequently filed the complete report before the end of the issuance month;

(vii) Other households excluded from the negative case universe during the review process as identified in §275.13(e).

(g) *Demonstration projects/SSA processing*. Households correctly classified for participation under the rules of an FNS-authorized demonstration project which FNS determines to significantly modify the rules for determining households' eligibility or allotment level, and households participating based upon an application processed by Social Security Administration personnel shall be included in the selection and review process. They shall be included in the universe for calculating sample sizes and included in the sample frames for sample selection as specified in paragraphs (b) through (e) of this section. In addition, they shall be included in the quality control review reports as specified in §275.21(e) and included in the calculation of a State agency's completion rate as specified in §275.23(b)(2). However, all results of reviews of active and negative demonstration project/SSA processed cases shall be excluded from the determination of State agencies' active and negative case error rates, payment error rates, and underissuance error rates as described in §275.23(c). The review of these cases shall be conducted in accordance with the provisions specified in §§275.12(h) and 275.13(f). FNS shall establish on an individual demonstration project basis whether the results of the reviews of active and negative demonstration project cases shall be included or excluded from the determination of State agencies' error rates as described in §275.23(b). Cases processed by SSA in accordance with

§ 273.2(k) of this chapter, except demonstration project cases, shall be excluded from the determination of State agencies' error rates. FNS shall establish on an individual project basis whether demonstration project cases processed by SSA shall be included or excluded from the determination of State agencies' error rates.

[Amdt. 260, 49 FR 6304, Feb. 17, 1984; 49 FR 14495, Apr. 12, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 328, 56 FR 60051, Nov. 27, 1991; Amdt. 366, 62 FR 29658, June 2, 1997; Amdt.373, 64 FR 38295, July 16, 1999; 68 FR 59523, Oct. 16, 2003; 75 FR 33436, June 11, 2010]

§ 275.12 Review of active cases.

(a) *General.* A sample of households which were certified prior to, or during, the sample month and issued food stamp benefits for the sample month shall be selected for quality control review. These active cases shall be reviewed to determine if the household is eligible and, if eligible, whether the household is receiving the correct allotment. The determination of a household's eligibility shall be based on an examination and verification of all elements of eligibility (i.e., basic program requirements, resources, income, and deductions). The elements of eligibility are specified in §§ 273.1 and 273.3 through 273.9 of this chapter. The verified circumstances and the resulting benefit level determined by the quality control review shall be compared to the benefits authorized by the State agency as of the review date. When changes in household circumstances occur, the reviewer shall determine whether the changes were reported by the participant and handled by the agency in accordance with the rules set forth in §§ 273.12, 273.13 and 273.21 of this chapter, as appropriate. For active cases, the review date shall always fall within the sample month, either the first day of a calendar or fiscal month or the day of certification, whichever is later. The review of active cases shall include: a household case record review; a field investigation, except as provided in paragraph (b) of this section; the identification of any variances; an error analysis; and the reporting of review findings.

(b) *Household case record review.* The reviewer shall examine the household case record to identify the specific facts relating to the household's eligibility and basis of issuance. If the reviewer is unable to locate the household case record, the reviewer shall identify as many of the pertinent facts as possible from the household issuance record. The case record review shall include all information applicable to the case as of the review month, including the application and worksheet in effect as of the review date. Documentation contained in the case record can be used as verification if it is not subject to change and applies to the sample month. If during the case record review the reviewer can determine and verify the household's ineligibility the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. The reviewer shall utilize information obtained through the case record review to complete column (2) of the Form FNS–380, and to tentatively plan the content of the field investigation.

(c) *Field investigation.* A full field investigation shall be conducted for all active cases selected in the sample month except as provided in paragraph (b) of this section. A full field investigation shall include a review of any information pertinent to a particular case which is available through the State Income and Eligibility Verification System (IEVS) as specified in § 272.8 of this chapter. If during the field investigation the reviewer determines and verifies the household's ineligibility, the review can be terminated at that point, provided that if the determination is based on information not obtained from the household then the correctness of that information must be confirmed as provided in paragraph (c)(2) of this section. In Alaska an exception to this requirement can be made in those isolated areas not reachable by regularly scheduled commercial air service, automobile, or other public transportation provided one fully documented attempt to contact the household has been

made. Such cases may be completed through casefile review and collateral contact. The field investigation will include interviews with the head of household, spouse, or authorized representative; contact with collateral sources of information; and any other materials and activity pertinent to the review of the case. The scope of the review shall not extend beyond the examination of household circumstances which directly relate to the determination of household eligibility and basis of issuance status. The reviewer shall utilize information obtained through the field investigation to complete column (3) of the Form FNS–380.

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to conducting the personal interview, the reviewer shall notify the household that it has been selected, as part of an ongoing review process, for review by quality control, and that a personal face-to-face interview will be conducted in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. The personal interview may take place at the participant's home, at an appropriate State agency certification office, or at a mutually agreed upon alternative location. The State agency shall determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at §273.2(e)(2) of this chapter. Those regulations provide that an office interview must be waived under certain hardship conditions. Under such hardship conditions the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or with the participant in the participant's home. Except in Alaska, when an exception to the field investigation is made in accordance with this section, the interview with the participant may not be conducted by phone. During the personal interview with the participant, the reviewer shall:

(i) Explore with the head of the household, spouse, authorized representative, or any other responsible household member, household circumstances as they affect each factor of eligibility and basis of issuance;

(ii) Establish the composition of the household;

(iii) Review the documentary evidence in the household's possession and secure information about collateral sources of verification; and

(iv) Elicit from the participant names of collateral contacts. The reviewer shall use, but not be limited to, these designated collateral contacts. If required by the State, the reviewer shall obtain consent from the head of the household to secure collateral information. If the participant refuses to sign the release of information form, the reviewer shall explain fully the consequences of this refusal to cooperate (as contained in paragraph (g)(1)(ii) of this section), and continue the review to the fullest extent possible.

(2) *Collateral contacts.* The reviewer shall obtain verification from collateral contacts in all instances when adequate documentation was not available from the participant. This second party verification shall cover each element of eligibility as it affects the household's eligibility and allotment. The reviewer shall make every effort to use the most reliable second party verification available (for example, banks, payroll listings, etc.), in accordance with FNS guidelines, and shall thoroughly document all verification obtained. If any information obtained by the QC reviewer differs from that given by the participant, then the reviewer shall resolve the differences to determine which information is correct before an error determination is made. The manner in which the conflicting information is resolved shall include recontacting the participant unless the participant cannot be reached. When resolving conflicting information reviewers shall use their best judgement based on the most reliable data available and shall document how the differences were resolved.

(d) *Variance identification.* The reviewer shall identify any element of a basic program requirement or the basis

of issuance which varies (i.e., information from review findings which indicates that policy was applied incorrectly and/or information verified as of the review date that differs from that used at the most recent certification action). For each element that varies, the reviewer shall determine whether the variance was State agency or participant caused. The results of these determinations shall be coded and recorded in column (4) of the Form FNS–380.

(1) *Variances included in error analysis.* Except for those variances in an element resulting from one of the situations described in paragraph (d)(2) of this section, any variance involving an element of eligibility or basis of issuance shall be included in the error analysis. Such variances shall include but not be limited to those resulting from a State agency's failure to take the disqualification action related to SSN's specified in § 273.6(c) of this chapter, and related to work requirements, specified in § 273.7(f) of this chapter.

(2) *Variances excluded from error analysis.* The following variances shall be excluded from the determination of a household's eligibility and basis of issuance for the sample month:

(i) Any variance resulting from the nonverified portion of a household's gross nonexempt income where there is conclusive documentation (a listing of what attempts were made to verify and why they were unsuccessful) that such income could not be verified at the time of certification because the source of income would not cooperate in providing verification and no other sources of verification were available. If there is no conclusive documentation as explained above, then the reviewer shall not exclude any resulting variance from the error determination. This follows certification policy outlined in § 273.2(f)(1)(i) of this chapter.

(ii) Any variance in cases certified under expedited certification procedures resulting from postponed verification of an element of eligibility as allowed under § 273.2(i)(4)(i) of this chapter. Verification of gross income, deductions, resources, household composition, alien status, or tax dependency may be postponed for cases eligible for expedited certification. However, if a case certified under expedited procedures contains a variance as a result of a residency deficiency, a mistake in the basis of issuance computation, a mistake in participant identification, or incorrect expedited income accounting, the variance shall be included in the error determination. This exclusion shall only apply to those cases which are selected for QC review in the first month of participation under expedited certification.

(iii) Any variance subsequent to certification in an element of eligibility or basis of issuance which was not reported and was not required to have been reported as of the review date. The elements participants are required to report and the time requirements for reporting are specified in §§ 273.12(a) and 273.21(h) and (i) of this chapter, as appropriate. If, however, a change in any element is reported, and the State agency fails to act in accordance with §§ 273.12(c) and 273.21(j) of this chapter, as appropriate, any resulting variance shall be included in the error determination.

(iv) Any variance in deductible expenses which was not provided for in determining a household's benefit level in accordance with § 273.2(f)(3)(i)(B) of this chapter. This provision allows households to have their benefit level determined without providing for a claimed expense when the expense is questionable and obtaining verification may delay certification. If such a household subsequently provides the needed verification for the claimed expense and the State agency does not redetermine the household's benefits in accordance with § 273.12(c) of this chapter, any resulting variance shall be included in the error determination.

(v) Any variance resulting from use by the State agency of information concerning households or individuals from an appropriate Federal source, provided that such information is correctly processed by the State agency. An appropriate Federal source is one which verifies: Income that it provides directly to the household; deductible expenses for which it directly bills the household; or other household circumstances which it is responsible for defining or establishing. To meet the provisions for correct processing, the

eligibility worker must have appropriately acted on timely information. In order to be timely, information must be the most current that was available to the State agency at the time of the eligibility worker's action.

(vi) Two variances relating to the Immigration and Naturalization Service's (INS) Systematic Alien Verification for Entitlements (SAVE) Program.

(A) A variance based on a verification of alien documentation by INS. The reviewer shall exclude such variance only if the State agency properly used SAVE and the State agency provides the reviewer with:

(*1*) The alien's name;

(*2*) The alien's status; and

(*3*) Either the Alien Status Verification Index (ASVI) Query Verification Number or the INS Form G–845, as annotated by INS.

(B) A variance based on the State agency's wait for the response of INS to the State agency's request for official verification of the alien's documentation. The reviewer shall exclude such variance only if the State agency properly used SAVE and the State agency provides the reviewer with either:

(*1*) The date of request, if the State agency was waiting for an automated response; or

(*2*) A copy of the completed Form G–845, if the State agency was waiting for secondary verification from INS.

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section, any variance resulting from application of a new Program regulation or implementing memorandum of a mandatory or optional change in Federal law that occurs during the first 120 days from the required implementation date. The variance exclusion shall apply to any action taken on a case directly related to implementation of a covered provision during the 120-day exclusionary period until the case is required to be recertified or acted upon for some other reason.

(A) When a regulation allows a State agency an option to implement prior to the required implementation date, the date on which the State agency chooses to implement may, at the option of the State, be considered to be the required implementation date for purposes of this provision. The exclusion period would be adjusted to begin with this date and end on the 120th day that follows. States choosing to implement prior to the required implementation date must notify the appropriate FNS Regional Office, in writing, prior to implementation that they wish the 120 day variance exclusion to commence with actual implementation. Absent such notification, the exclusionary period will commence with the required implementation date.

(B) A State agency shall not exclude variances which occur prior to the States implementation.

(C) A State agency which did not implement until after the exclusion period shall not exclude variances under this provision.

(D) Regardless of when the State agency actually implemented the regulation, the variance exclusion period shall end on the 120th day following the required implementation date, including the required implementation date defined in paragraph (d)(2)(vii)(A) of this section.

(E) For purposes of this provision, implementation occurs on the effective date of State agency's written statewide notification to its eligibility workers.

(F) This variance exclusion applies to changes occasioned by final regulations or interim regulations. In the case of a final regulation issued following an interim regulation, the exclusion applies only to significant changes made to the earlier interim regulation. A significant change is one which the final regulation requires the State agency to implement on or after publication of a final rule.

(viii) Any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies. For purposes of this provision, written Federal policy is that which is issued in regulations, notices, handbooks, category three and four Policy Memoranda under the Policy Interpretation Response System, and regional policy memoranda issued pursuant to these. Written Federal policy is also a

letter from the Food and Nutrition Service to a State agency which contains comments on the State agency's food stamp manual or instructions.

(ix) Any variance in a child support deduction which was the result of an unreported change subsequent to the most recent certification action shall be excluded from the error determination.

(3) *Other findings.* Findings other than variances made during the review which are pertinent to the food stamp household or the case record may be acted on at the discretion of the State agency. Examples of such findings are: an incorrect age of a household member which is unrelated to an element of eligibility; an overdue subsequent certification; no current application on file; insufficient documentation; incorrect application of the verification requirements specified in part 273 of this chapter; and deficiencies in work registration procedural requirements. Such deficiencies include: inadequate documentation of each household member's exempt status; work registration form for each nonexempt household member not completed at the time of application and every six months thereafter; and the household not advised of its responsibility to report any changes in the exempt status of any household member.

(e) *Error analysis.* The reviewer shall analyze all appropriate variances in completed cases, in accordance with paragraph (d) of this section, which are based upon verified information and determine whether such cases are either eligible, eligible with a basis of issuance error, or ineligible. The review of an active case determined ineligible shall be considered completed at the point of the ineligibility determination. For households determined eligible, the review shall be completed to the point where the correctness of the basis of issuance is determined, except in the situations outlined in paragraph (g) of this section. In the event that a review is conducted of a household which is receiving restored or retroactive benefits for the sample month, the portion of the allotment which is the restored or retroactive benefit shall be excluded from the determination of the household's eligibility and/or basis of issuance. A food stamp case in which a household member(s) receives public assistance shall be reviewed in the same manner as all other food stamp cases, using income as received. The determination of a household's eligibility and the correctness of the basis of issuance shall be determined based on data entered on the computation sheet as well as other information documented on other portions of the Form FNS–380, as appropriate.

(f) *Reporting of review findings.* All information verified to be incorrect during the review of an active case shall be reported to the State agency for appropriate action on an individual case basis. This includes information on all variances in elements of eligibility and basis of issuance in both error and nonerror cases. In addition, the reviewer shall report the review findings on the Form FNS–380–1, in accordance with the following procedures:

(1) *Eligibility errors.* If the reviewer determines that a case is ineligible, the occurrence and the total allotment issued in the sample month shall be coded and reported. Whenever a case contains a variance in an element which results in an ineligibility determination and there are also variances in elements which would cause a basis of issuance error, the case shall be treated as an eligibility error. The reviewer shall also code and report any variances that directly contributed to the error determination. In addition, if the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances which were discovered and verified during the course of the review.

(2) *Basis of issuance of errors.* If the reviewer determines that SNAP allotments were either overissued or underissued to eligible households in the sample month, the State agency shall code and report any variances that directly contributed to the error determination that were discovered and verified during the course of the review. Only variances that exceed $50.00 (the threshold) shall be included in the calculation of the underissuance error rate, overissuance error rate, and

payment error. If the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances that were discovered and verified during the course of the review.

(g) *Disposition of case reviews.* Each case selected in the sample of active cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Form FNS–380–1.

(1) *Cases reported as not complete.* Active cases shall be reported as not completed if the household case record cannot be located and the household itself is not subsequently located; if the household case record is located but the household cannot be located unless the reviewer attempts to locate the household as specified in this paragraph; or if the household refuses to cooperate, as discussed in this paragraph. All cases reported as not complete shall be reported to the State agency for appropriate action on an individual case basis. Without FNS approval, no active case shall be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2).

(i) If the reviewer is unable to locate the participant either at the address indicated in the case record or in the issuance record and the State agency is not otherwise aware of the participant's current address, the reviewer shall attempt to locate the household by contacting at least two sources which the State agency determines are most likely to be able to inform the reviewer of the household's current address. Such sources include but are not limited to:

(A) The local office of the U.S. Postal Service;

(B) The State Motor Vehicle Department;

(C) The owner or property manager of the residence at the address in the case record; and

(D) Any other appropriate sources based on information contained in the case record, such as public utility companies, telephone company, employers, or relatives. Once the reviewer has attempted to locate the household and has documented the response of each source contacted, if the household still cannot be located and the State agency has documented evidence that the household did actually exist, the State agency shall report the active case as not subject to review. In these situations documented evidence shall be considered adequate if it either documents two different elements of eligibility or basis of issuance, such as a copy of a birth certificate for age and pay status for income; or documents the statement of a collateral contact indicating that the household did exist. FNS Regional Offices will monitor the results of the contacts which State agencies make in attempting to locate households.

(ii) If a household refuses to cooperate with the quality control reviewer and the State agency has taken other administrative steps to obtain that cooperation without obtaining it, the household shall be notified of the penalities for refusing to cooperate with respect to termination and reapplication, and of the possibility that its case will be referred for investigation for willful misrepresentation. If a household refuses to cooperate after such notice, the reviewer must- attempt to complete the case and shall report the household's refusal to the State agency for termination of its participation without regard for the outcome of that attempt. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the quality control review process. In certain circumstances, the household may demonstrate that it is unwilling to cooperate by not taking actions after having been given every reasonable opportunity to do so, even though the household or its members do not state that the household refuses to cooperate. Instances where the household's unwillingness to cooperate in completing a quality control review has the effect of a refusal to cooperate shall include the following:

(A) The household does not respond to a letter from the reviewer sent Certified Mail-Return Receipt Requested within 30 days of the date of receipt;

(B) The household does not attend an agreed upon interview with the reviewer and then does not contact the reviewer within 10 days of the date of the scheduled interview to reschedule the interview; or

(C) The household does not return a signed release of information statement to the reviewer within 10 days of either agreeing to do so or receiving a request from the reviewer sent Certified Mail-Return Receipt Requested. However, in these and other situations, if there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be reported to the State agency for termination.

(2) *Cases not subject to review*. Active cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(1), these shall include:

(i) Death of all members of a household if they died before the review could be undertaken or completed;

(ii) The household moved out of State before the review could be undertaken or completed;

(iii) The household, at the time of the review, is under active investigation for intentional Food Stamp Program violation, including a household with a pending administrative disqualification hearing;

(iv) A household receiving restored benefits in accordance with § 273.17 of this chapter but not participating based upon an approved application for the sample month;

(v) A household dropped as a result of correction for oversampling;

(vi) A household participating under disaster certification authorized by FNS for a natural disaster;

(vii) A case incorrectly listed in the active frame;

(viii) A household appealing an adverse action when the review date falls within the time period covered by continued participation pending the hearing;

(ix) A household that did not receive benefits for the sample month; or

(x) A household that still cannot be located after the reviewer has attempted to locate it in accordance with paragraph (g)(1)(i) of this section.

(h) *Demonstration projects/SSA processing*. Households correctly classified for participation under the rules of a demonstration project which establishes new FNS-authorized eligibility criteria or modifies the rules for determining households' eligibility or allotment level shall be reviewed following standard procedures provided that FNS does not modify these procedures to reflect modifications in the treatment of elements of eligibility or basis of issuance in the case of a demonstration project. If FNS determines that information obtained from these cases would not be useful, then they may be excluded from review. A household whose most recent application for participation was processed by Social Security Administration personnel shall be reviewed following standard procedures. This includes applications for recertification, provided such an application is processed by the SSA as allowed in § 273.2(k)(2)(ii) of this chapter.

[Amdt. 260, 49 FR 6306, Feb. 17, 1984; 49 FR 14495, Apr. 12, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 275.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 275.13 Review of negative cases.

(a) *General*. A sample of actions to deny applications, or suspend or terminate a household in the sample month shall be selected for quality control review. These negative actions shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. Depending on the characteristics of individual State systems, the review date for negative cases could be the date of the agency's decision to deny, suspend, or terminate program benefits, the date on which the decision is entered into the computer system, or the date of the notice to the client. State agencies must consistently apply the same definition for review date to all sample

cases of the same classification. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate. In certain instances, contact with the household or a collateral contact may be permitted.

(b) *Household case record review*. The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct. Through the review of the household case record, the reviewer shall complete the household case record sections and document the reasons for denial, suspension or termination on the Negative Quality Control Review Schedule, Form FNS–245.

(c) *Error analysis*. (1) A negative case shall be considered valid if the reviewer is able to verify through documentation in the household case record that a household was correctly denied, suspended, or terminated from the program in accordance with the reason for the action given by the State agency in the notice. Whenever the reviewer is unable to verify the correctness of the State agency's decision to deny, suspend, or terminate a household's participation through such documentation, the QC reviewer may contact the household or a collateral contact to verify the correctness of the specific negative action under review. If the reviewer is unable to verify the correctness of the State agency's decision to deny, suspend, or terminate the case for the specific reason given for the action, the negative case shall be considered invalid.

(2) The reviewer shall exclude a variance when the State agency erroneously denied, suspended or terminated a household's participation based on an erroneous verification of alien documentation by the Immigration and Nationalization Services (INS) Systematic Alien Verification for Entitlements (SAVE) Program. The reviewer shall exclude the variance only if the State agency properly used SAVE, and the State agency provides the reviewer with:

(i) The alien's name;

(ii) The alien's status; and

(iii) Either the Alien Status Verification Index (ASVI) Query Verification Number or the INS Form G–845, as annotated by INS.

(d) *Reporting of review findings*. When a negative case is incorrect, this information shall be reported to the State agency for appropriate action on an individual case basis, such as recomputation of the allotment and restoration of lost benefits. In addition, the reviewer shall code and record the error determination on the Negative Quality Control Review Schedule, Form FNS–245.

(e) *Disposition of case review*. Each case selected in the sample of negative cases must be accounted for by classifying it as completed, not completed, or not subject to review. These case dispositions shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS–245.

(1) *Cases reported as not complete*. Negative cases shall be reported as not completed if the reviewer, after all reasonable efforts, is unable to locate the case record. In no event, however, shall any negative case be reported as not completed solely because the State agency was unable to process the case review in time for it to be reported in accordance with the timeframes specified in § 275.21(b)(2), without prior FNS approval. This information shall be reported to the State agency for appropriate action on an individual case basis.

(2) *Cases not subject to review*. Negative cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(2), these shall include:

(i) A household which was dropped as a result of a correction for oversampling;

(ii) A household which was listed incorrectly in the negative frame.

(f) *Demonstration projects/SSA processing*. A household whose application has been denied or whose participation has been suspended or terminated under the rules of an FNS-authorized demonstration project shall be reviewed following standard procedures

unless FNS provides modified procedures to reflect the rules of the demonstration project. If FNS determines that information obtained from these cases would not be useful, then these cases may be excluded from review. A household whose application has been processed by SSA personnel and is subsequently denied participation shall be reviewed following standard procedures.

[Amdt. 260, 49 FR 6309, Feb. 17, 1984, as amended at 53 FR 39443, Oct. 7, 1988; Amdt. 373, 64 FR 38296, July 16, 1999; 75 FR 33437, June 11, 2010]

§ 275.14 Review processing.

(a) *General*. Each State agency shall use FNS handbooks, worksheets, and schedules in the quality control review process.

(b) *Handbooks*. The reviewer shall follow the procedures outlined in the Quality Control Review Handbook, FNS Handbook 310, to conduct quality control reviews. In addition, the sample of active and negative cases shall be selected in accordance with the sampling techniques described in the Quality Control Sampling Handbook, FNS Handbook 311.

(c) *Worksheets*. The Form FNS–380, shall be used by the reviewer to record required information from the case record, plan and conduct the field investigation, and record findings which contribute to the determination of eligibility and basis of issuance in the review of active cases. In some instances, reviewers may need to supplement Form FNS–380 with other forms. The State forms for appointments, interoffice communications, release of information, etc., should be used when appropriate.

(d) *Schedules*. Decisions reached by the reviewer in active case reviews shall be coded and recorded on the Integrated Review Worksheet, Form FNS–380–1. Such active case review findings must be substantiated by information recorded on the Integrated Review Worksheet, Form FNS–380. In negative case reviews, the review findings shall be coded and recorded on the Negative Quality Control Review Schedule, Form FNS–245, and supplemented as necessary with other documentation substantiating the findings.

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; 75 FR 33438, June 11, 2010]

Subpart D—Data Analysis and Evaluation

§ 275.15 Data management.

(a) *Analysis*. Analysis is the process of classifying data, such as by areas of program requirements or use of error-prone profiles, to provide a basis for studying the data and determining trends including significant characteristics and their relationships.

(b) *Evaluation*. Evaluation is the process of determining the cause(s) of each deficiency, magnitude of the deficiency, and geographic extent of the deficiency, to provide the basis for planning and developing effective corrective action.

(c) Each State agency must analyze and evaluate at the State and project area levels all management information sources available to:

(1) Identify all deficiencies in program operations and systems;

(2) Identify causal factors and their relationships;

(3) Identify magnitude of each deficiency, where appropriate (This is the frequency of each deficiency occurring based on the number of program records reviewed and where applicable, the amount of loss either to the program or participants or potential participants in terms of dollars. The State agency shall include an estimate of the number of participants or potential participants affected by the existence of the deficiency, if applicable);

(4) Determine the geographic extent of each deficiency (e.g., Statewide/individual project area or management unit); and,

(5) Provide a basis for management decisions on planning, implementing, and evaluating corrective action.

(d) In the evaluation of data, situations may arise where the State agency identifies the existence of a deficiency, but after reviewing all available management information sources sufficient information is not available to make a determination of the actual causal factor(s), magnitude, or geographic extent

necessary for the development of appropriate corrective action. In these situations, the State agency shall be responsible for gathering additional data necessary to make these determinations. This action may include, but is not limited to, conducting additional full or partial ME reviews in one or more project areas/management units or discussions with appropriate officials.

(e) Deficiencies identified from all management information sources must be analyzed and evaluated together to determine their causes, magnitude, and geographic extent. Causes indicated and deficiencies identified must be examined to determine if they are attributable to a single cause and can be effectively eliminated by a single action. Deficiencies and causes identified must also be compared to the results of past corrective action efforts to determine if the new problems arise from the causal factors which contributed to the occurrence of previously identified deficiencies.

(f) Data analysis and evaluation must be an ongoing process to facilitate the development of effective and prompt corrective action. The process shall also identify when deficiencies have been eliminated through corrective action efforts, and shall provide for the reevaluation of deficiencies and causes when it is determined that corrective action has not been effective.

(g) *Identification of High Error Project Areas/Counties/Local Offices.* FNS may use quality control information to determine which project areas/counties/local offices have reported payment error rates that are either significantly greater than the State agency average or greater than the national error standard of the Program. When FNS notifies a State agency that a ''high error'' area exists, the State agency shall ensure that corrective action is developed and reported in accordance with the provisions of § 275.17. If FNS identifies a ''high error'' locality which a State agency has previously identified as error-prone and taken appropriate action, no further State agency shall be required. If a State agency's corrective action plan fails to address problems in FNS-identified ''high error'' areas, FNS may require a State agency to implement new or modified cost-effective procedures for the certification of households.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 320, 55 FR 6240, Feb. 22, 1990]

Subpart E—Corrective Action

§ 275.16 Corrective action planning.

(a) Corrective action planning is the process by which State agencies shall determine appropriate actions to reduce substantially or eliminate deficiencies in program operations and provide responsive service to eligible households.

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from a payment error rate of 6 percent or greater (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(2) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(3) Are identified by FNS reviews, GAO audits, contract audits, or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS); and,

(4) Result from 5 percent or more of the State agency's QC sample being coded ''not complete'' as defined in § 275.12(g)(1) of this part. This standard shall apply separately to both active and negative samples.

(5) Result in underissuances, improper denials, improper suspensions, improper termination, or improper systemic suspension of benefits to eligible households where such errors are

caused by State agency rules, practices, or procedures.

(c) The State agency shall ensure that appropriate corrective action is taken on all deficiencies including each case found to be in error by quality control reviews and those deficiencies requiring corrective action only at the project area level. Moreover, when a substantial number of deficiencies are identified which require State agency level and/or project area/management unit corrective action, the State agency and/or project area/management unit shall establish an order of priority to ensure that the most serious deficiencies are addressed immediately and corrected as soon as possible. Primary factors to be considered when determining the most serious deficiencies are:

(1) Magnitude of the deficiency as defined in § 275.15(c)(3) of this part;

(2) Geographic extent of the deficiency (e.g., Statewide/project area or management unit);

(3) Anticipated results of corrective actions; and

(4) High probability of errors occurring as identified through all management evaluation sources.

(d) In planning corrective action, the State agency shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, and training to develop appropriate and effective corrective action measures.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 169, 46 FR 7263, Jan. 23, 1981; Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3409, Feb. 4, 1987; Amdt. 328, 56 FR 60052, Nov. 27, 1991; 68 FR 59523, Oct. 16, 2003; 75 FR 33438, June 11, 2010]

§ 275.17 State corrective action plan.

(a) State agencies shall prepare corrective action plans addressing those deficiencies specified in § 275.16(b) requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. State agencies shall provide updates to their corrective action plans through regular, semiannual updates. These semiannual updates shall be received by FNS by May 1st and November 1st respectively. Such updates must contain:

(1) Any additional deficiencies identified since the previous corrective action plan update;

(2) Documentation that a deficiency has been corrected and is therefore being removed from the plan; and

(3) Any changes to planned corrective actions for previously reported deficiencies.

(b) *Content.* State corrective action plans shall contain, but not necessarily be limited to, the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate, as defined in § 275.15(c)(3) of this part;

(4) Geographic extent of the deficiency (e.g., Statewide/project area or management unit—specific project areas in which the deficiency occurs);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, and the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the State agency will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

(c) FNS will provide technical assistance in developing corrective action plans when requested by State agencies.

(d) State agencies will be held accountable for the efficient and effective operation of all areas of the program. FNS is not precluded from issuing a warning as specified in part 276 because

a deficiency is included in the State agency's corrective action plan.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980, as amended by Amdt. 266, 52 FR 3409, Feb. 4, 1987]

§ 275.18 Project area/management unit corrective action plan.

(a) The State agency shall ensure that corrective action plans are prepared at the project area/management unit level, addressing those deficiencies not required to be included in the State corrective action plan. State agencies may elect to prepare these plans for or in cooperation with the project area. These project area/management unit corrective action plans shall be open-ended and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. Any deficiencies detected through any source not previously reported to the State agency which require incorporation into the Project Area/Management Unit Corrective Action Plan shall be submitted to the State agency within 60 days of identification. As deficiencies are reduced substantially or eliminated, the project area/management unit shall notify the State agency in writing. The project area/management unit shall be responsible for documenting why each deficiency is being removed from the Plan. The removal of any deficiency from the Plan will be subject to State agency and FNS review and validation.

(b) *Content.* Project area/management unit corrective action plans shall contain all the information necessary to enable the State agency to monitor and evaluate the corrective action properly. Also, State agencies shall establish requirements for project area/management units in planning, implementing and reporting corrective action to assist the State agency's efforts to fulfill its responsibilities for determining which deficiencies must be addressed in the State corrective action plan. States should consider requiring project area/management unit plans to include the following, based on the most recent information available:

(1) Specific description and identification of each deficiency;

(2) Source(s) through which the deficiency was detected;

(3) Magnitude of each deficiency, if appropriate, as defined in § 275.15(c)(3) of this part;

(4) Geographic extent of the deficiency (throughout the project area/management unit or only in specific offices);

(5) Identification of causal factor(s) contributing to the occurrence of each deficiency;

(6) Identification of any action already completed to eliminate the deficiency;

(7) For each deficiency, an outline of actions to be taken, the expected outcome of each action, the target date for each action, the date by which each deficiency will have been eliminated; and

(8) For each deficiency, a description of the manner in which the project area/management unit will monitor and evaluate the effectiveness of the corrective action in eliminating the deficiency.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980]

§ 275.19 Monitoring and evaluation.

(a) The State agency shall establish a system for monitoring and evaluating corrective action at the State and project area levels. Monitoring and evaluation shall be an ongoing process to determine that deficiencies are being substantially reduced or eliminated in an efficient manner and that the program provides responsive service to eligible households.

(b) The State agency shall ensure that corrective action on all deficiencies identified in the State Corrective Action Plan and Project Area/Management Unit Corrective Action Plan is implemented and achieves the anticipated results within the specified time frames. The State agency shall monitor and evaluate corrective action at the State and project levels through a combination of reports, field reviews, and examination of current data available through program management tools and other sources.

(c) In instances where the State agency and/or the project area/management unit determines that the proposed corrective action is not effective in reducing substantially or eliminating deficiencies, the State agency and/or the project area/management

unit shall promptly reevaluate the deficiency, causes, and the corrective action taken, and develop and implement new corrective actions.

[Amdt. 160, 45 FR 15909, Mar. 11, 1980]

Subpart F—Responsibilities for Reporting on Program Performance

§ 275.20 ME review schedules.

(a) Each State agency shall submit its review schedule to the appropriate FNS regional office at least 60 days prior to the beginning of the next year's review period (the Federal fiscal year). These schedules must ensure that all project areas/management units will be reviewed within the required time limits. Each schedule shall identify the project areas/management units in each classification and list each project area to be reviewed by month or by quarter. A State agency may submit a request to use an alternate review schedule at any time. The alternate schedule shall not be effective until approved by FNS in accordance with § 275.5(b)(2).

(b) State agencies shall notify the appropriate FNS regional office of all changes in review schedules.

[Amdt. 266, 52 FR 3410, Feb. 4, 1987]

§ 275.21 Quality control review reports.

(a) *General.* Each State agency shall submit reports on the performance of quality control reviews in accordance with the requirements outlined in this section. These reports are designed to enable FNS to monitor the State agency's compliance with Program requirements relative to the Quality Control Review System. Every case selected for review during the sample month must be accounted for and reflected in the appropriate report(s).

(b) *Individual cases.* The State agency shall report the review findings on each case selected for review during the sample month. For active cases, the State agency shall submit the edited findings of the Form FNS–380–1. For negative cases, the State agency shall submit a summary report which is produced from the edited findings on individual cases which are coded on the Negative Quality Control Review Schedule, Form FNS–245. The review findings shall be reported as follows:

(1) The State agency shall input and edit the results of each active and negative case into the FNS supplied computer terminal and transmit the data to the host computer. For State agencies that do not have FNS supplied terminals, the State agency shall submit the results of each QC review in a format specified by FNS. Upon State agency request, FNS will consider approval of a change in the review results after they have been reported to FNS.

(2) The State agency shall have at least 115 days from the end of the sample month to dispose of and report the findings of all cases selected in a sample month. FNS may grant additional time as warranted upon request by a State agency for cause shown to complete and dispose of individual cases.

(3) The State agency shall supply the FNS Regional Office with individual household case records and the pertinent information contained in the individual case records, or legible copies of that material, as well as legible hard copies of individual Forms FNS–380, FNS–380–1, and FNS–245 or other FNS-approved report forms, within 10 days of receipt of a request for such information.

(4) For each case that remains pending 115 days after the end of the sample month, the State agency shall immediately submit a report that includes an explanation of why the case has not been disposed of, documentation describing the progress of the review to date, and the date by which it will be completed. If FNS extends the time frames in paragraph (b)(2) of this section, this date will be extended accordingly. If FNS determines that the above report does not sufficiently justify the case's pending status, the case shall be considered overdue. Depending upon the number of overdue cases, FNS may find the State agency's QC system to be inefficient or ineffective and suspend and/or disallow the State agency's Federal share of administrative funds in accordance with the provisions of § 276.4.

(c) *Monthly status.* The State agency shall report in a manner directed by the regional office the monthly

progress of sample selection and completion within 125 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month. If FNS extends the time frames in paragraph (b)(2) of this section, this date will be extended accordingly.

(d) *Demonstration projects/SSA processing*. The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (*i.e.*, those cases described in § 275.11(g)) in accordance with paragraph (c) of this section.

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3410, Feb. 4, 1987; 75 FR 33438, June 11, 2010]

§ 275.22 Administrative procedure.

Reports on program performance are intended to provide the State an opportunity to determine compliance with program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. States' reports enable FNS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. Reports must be submitted in duplicate to the appropriate FNS Regional Office according to the time frames established in §§ 275.20, 275.21, and 275.22 of this part.

[Amdt. 160, 45 FR 15911, Mar. 11, 1980. Redesignated at 52 FR 3410, Feb. 4, 1987]

Subpart G—Program Performance

§ 275.23 Determination of State agency program performance.

(a) *Determination of efficiency and effectiveness*. FNS shall determine the efficiency and effectiveness of a State's administration of the Supplemental Nutrition Assistance Program by measuring State compliance with the standards contained in the Food and Nutrition Act, regulations, and the State Plan of Operation and State efforts to improve program operations through corrective action. This determination shall be made based on:

(1) Reports submitted to FNS by the State;

(2) FNS reviews of State agency operations;

(3) State performance reporting systems and corrective action efforts; and

(4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(b) *State agency error rates*. FNS shall estimate each State agency's active case, payment, and negative case error rate based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The determination of the correctness of the case shall be based on certification policy as set forth in part 273 of this chapter.

(1) *Demonstration projects/SSA processing*. FNS shall make a determination for each individual project whether the reported results of reviews of active and negative demonstration project cases shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate. The reported results of reviews of cases processed by SSA in accordance with § 273.2(k) of this chapter shall be excluded from the estimate of the active case error rate, payment error rate, and negative case error rate. FNS shall make a project by project determination whether the reported results of reviews of active and negative demonstration project cases processed by SSA shall be included or excluded from the estimate of the active case error rate, payment error rate, and negative case error rate.

(2) *Determination of payment error rates*. As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate by rereviewing the State agency's active case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FNS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1' = y_1 + b_1 (X_1 - x_1)$, where y_1' is the average value of allotments overissued to eligible and ineligible households; y_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, b_1 is the estimate of the regression coefficient regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, x_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and X_1 is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs Y_1, X_1, and x_1 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2' = y_2 + b_2(X_2 - x_2$, where y_2' is the average value of allotments underissued to households included in the active error rate, y_2 is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, b_2 is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, x_2 is the average value of allotments underissued to participating households in the rereview sample according to State agency findings, and X_2 is the average value of allotments underissued to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs y_2, X_2, and x_2 are weighted averages and b_2 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1' = y_1'/u$, yielding the regressed overpayment error rate, and $r_2' = y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households in the State agency sample.

(D) After application of the adjustment provisions of paragraph (b)(2)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate. The adjusted regressed payment error rate is given by $r_1'' + r_2''$.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment and negative case error rates based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate or negative case error rate based upon the best information available. After consultation with the State agency, the assigned payment error rate will then be used in the liability determination. After consultation with the State agency, the assigned negative case error rate will be the official State negative case error rate for any purpose. State agencies shall have the right to appeal assessment of an error rate in this situation in accordance with the procedures of Part 283 of this chapter.

(iii) Should a State agency fail to complete 98 percent of its required sample size, FNS shall adjust the State agency's regressed error rates using the following equations:

(A) $r_1'' = r_1' + 2(1-C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1' is the regressed overpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1'' = r_1'$.

(B) $r_2'' = r_2' + 2(1-C)S_2$, where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (b)(2)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is

the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2'' = r_2'$.

(c) *FNS Time frames for completing case review process, arbitration, and issuing error rates.* The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment and negative case error rates for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment and negative case error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice of potential liability to its respective chief executive officer and legislature. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food and Nutrition Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Claims Collection Standards (31 CFR Parts 900–904), depending upon the amount of the State's liability. FNS is not bound by the time frames referenced in paragraph (c) of this section in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate the State's payment error rate and payment error rate liability within the prescribed time frame.

(d) *State agencies' liabilities for payment error rates.* At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed and evaluated to determine whether the payment error rate goal (national performance measure) established in paragraph (d)(1) of this section has been met. Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the paragraph (d)(2) of this section.

(1) *National performance measure.* FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate multiplied by that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to administrative or judicial appeal.

(2) *Liability.* For fiscal year 2003 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of the value of all allotments issued by the State agency in the second (or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

(3) *Right to appeal payment error rate liability.* Determination of a State agency's payment error rate or whether that payment error rate exceeds 105 percent of the national performance measure shall be subject to administrative or judicial review only if a liability amount is established for that fiscal year. Procedures for good cause appeals of excessive payment error rates are addressed in paragraph (f) of this section. The established national performance measure is not subject to administrative or judicial appeal, nor is any prior fiscal year payment error rate subject to appeal as part of the appeal of a later fiscal year's liability amount. However, State agencies may address matters related to good cause in an immediately prior fiscal year that impacted the fiscal year for which a liability amount has been established. The State agency will need to

address how year 2 was impacted by the event(s) in the prior year.

(4) *Relationship to warning process and negligence.* (i) States' liability for payment error rates as determined above in paragraphs (d)(1) through (d)(3) of this section are not subject to the warning process of § 276.4(d) of this chapter.

(ii) FNS shall not determine negligence (as described in § 276.3 of this chapter) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under § 276.3 of this chapter for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined in § 276.3 of this chapter), with specific certification requirements. Thus, FNS will not use the result of States' QC reviews to determine negligence.

(iii) Whenever a State is assessed a liability amount for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(e) *Liability amount determinations.* (1) FNS shall provide for each State agency whose payment error rate subjects it to a liability amount the following determinations, each expressed as a percentage of the total liability amount. FNS shall:

(i) Waive all or a portion of the liability;

(ii) Require the State agency to invest up to 50 percent of the liability in activities to improve program administration (new investment money shall not be matched by Federal funds);

(iii) Designate up to 50 percent of the liability as ''at-risk'' for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or

(iv) Choose any combination of these options.

(2) Once FNS determines the percentages in accordance with paragraphs (e)(1)(i) through (e)(1)(iv) of this section, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State agency shall settle any waiver percentage amount or new investment percentage amount before the end of the fiscal year in which the liability amount is determined. The determination of percentages for waiver, new investment, and/or at-risk amounts by the Department is not appealable. Likewise, a settlement of the waiver and new investment amounts cannot be appealed.

(f) *Good cause.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under part 283 of this chapter. Paragraphs (f)(1) through (f)(5) of this section describe the unusual events that are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability amount or increased liability amount is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability amount attributable to the unusual

event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(1) *Natural disasters and civil disorders.* Natural disasters such as those under the authority of The Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–707), which amended The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288), or civil disorders that adversely affect program operations.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The nature of the disaster(s) (*e.g.*, a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s) and evidence that the President has declared a disaster;

(B) The date(s) of the occurrence;

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the occurrence (*i.e.*, the county or counties where the disaster occurred);

(E) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors.

(G) The identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(H) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a disaster or civil disorder:

(*1*) Geographical impact of the disaster;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the disaster and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described the State agency would have exceeded the national performance measure in the review period.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event. Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FNS and already excluded from the error rate calculations under §275.12(g)(2)(vi). The counties considered affected will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event

(such as a county that diverted significant numbers of Supplemental Nutrition Assistance Program certification or administrative staff). The amount of the waiver of liability will be determined using the linear equation W = Ia/Ib × [M/12 or Mp/18] × L, where Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is the number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100 percent of the liability amount; however, no more than 100 percent of a State's liability amount will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(2) *Strikes.* Strikes by State agency staff necessary to determine Supplemental Nutrition Assistance Program eligibility and process case changes.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) Which workers (*i.e.,* eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(B) The date(s) and nature of the strike (*i.e.,* the issues surrounding the strike);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the strike (*i.e.,* the county or counties where the strike occurred);

(E) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(F) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(G) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that resulted from the strike and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of a liability amount in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of the strike:

(*1*) Geographical impact of the strike;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the strike and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(iii) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (f)(1) of this section. Under this approach, unless the State agency

can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(3) *Caseload growth.* A significant growth in Supplemental Nutrition Assistance Program caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

(i) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(A) The amount of growth (both actual and percentage);

(B) The time the growth occurred (what month(s)/year);

(C) The date(s) after the occurrence when program operations were affected;

(D) The geographic extent of the caseload growth (*i.e.* Statewide or in which particular counties);

(E) The impact of caseload growth;

(F) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(G) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

(H) The degree to which the error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria and methodology shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual caseload growth:

(*1*) Geographical impact of the caseload growth;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the caseload growth and its impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the waiver amount may be made when a State agency's recent error rate history indicates that even absent the events described the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered.

(iii) If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be evaluated using the following five-step calculation:

(A) Step 1—determine the average number of households certified to participate Statewide in the Supplemental Nutrition Assistance Program for the base period consisting of twelve consecutive months ending with March of the prior fiscal year;

(B) Step 2—determine the percentage of increase in caseload growth from the base period (Step 1) using the average number of households certified to participate Statewide in the Supplemental Nutrition Assistance Program for any twelve consecutive months in the period beginning with April of the prior fiscal year and ending with June of the current year;

(C) Step 3—determine the percentage the error rate for the subject fiscal year, as calculated under paragraph (b)(2) of this section, exceeds the national performance measure determined in accordance with paragraph (d)(1) of this section;

(D) Step 4—divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and

(E) Step 5—multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability.

(iv) Under this methodology, caseload growth of less than 15% and/or occurring in the last three months of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100 percent of the liability amount; however, no more than 100 percent of a State's liability amount will be waived for any one fiscal year.

(4) *Program changes.* A change in the Supplemental Nutrition Assistance Program or other Federal or State program that has a substantial adverse impact on the management of the Supplemental Nutrition Assistance Program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by §275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(i) When submitting a request for good cause relief based on unusual changes in the Supplemental Nutrition Assistance Program or other Federal or State programs, the State agency shall provide the following information:

(A) The type of changes(s) that occurred;

(B) When the change(s) occurred;

(C) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(D) Reason(s) the State agency was unable to adequately handle the change(s);

(E) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(F) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(G) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria will be used to assess and evaluate good cause in conjunction with the appeals process and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of unusual changes in the Supplemental Nutrition Assistance Program or other Federal and State programs:

(*1*) State efforts to control impact on program operations;

(*2*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*3*) The duration of the unusual changes in the Supplemental Nutrition Assistance Program or other Federal and State programs and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(5) *Significant circumstances beyond the control of a State agency.* Requests for relief from errors caused by the uncontrollable effect of a significant circumstance other than those specifically set forth in paragraphs (f)(1) through (f)(4) of this section will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(i) The State agency shall provide the following information when submitting a request for good cause relief based on significant circumstances, the State agency shall provide the following information:

(A) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(B) Why the State agency had no control over the significant circumstances;

(C) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(D) Where the significant circumstances existed (*i.e.* Statewide or in particular counties);

(E) When the significant circumstances existed (provide specific dates whenever possible);

(F) The proportion of the Supplemental Nutrition Assistance Program caseload whose management was affected;

(G) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(H) The percentage of the payment error rate that was caused by the significant circumstances and how this figure was derived; and

(I) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(ii) (A) The following criteria shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability amount attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (f)(5) of this section:

(*1*) Geographical impact of the significant circumstances;

(*2*) State efforts to control impact on program operations;

(*3*) The proportion of Supplemental Nutrition Assistance Program caseload affected; and/or

(*4*) The duration of the significant circumstances and the impact on program operations.

(B) Adjustments for these factors may result in a waiver of all, part, or none of the liability amount for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(6) *Adjustments*. When good cause is found under the criteria in paragraphs (f)(1) through (f)(5) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(7) *Evidence*. When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (f) of this section so as to fully explain how a particular significant circumstance(s) uncontrollably affected its payment error rate.

(8) *Finality*. The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review as established under the provisions of §§ 283.17 and 283.20 of this chapter.

(g) *Results of appeals on liability amount determinations*. (1) If a State agency wholly prevails on appeal and, consequently, its liability amount is reduced to $0 through the appeal, and if the State agency began new investment activities prior to the appeal determination, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was expended by the State agency.

(2) If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for new investment to be invested or to be paid to the Federal government.

(3) If neither the State agency nor FNS wholly prevails on a State agency's appeal, FNS shall apply the original waiver, new investment, and at-risk percentage determinations to the liability amount established through the appeal. If the State agency began new investment prior to the appeal decision and has already expended more than the amount produced for new investment as a result of the appeal decision, the Department will match the amount of funds expended in excess of the amount now required by the Department for new investment.

(h) *New investment requirements*. Once FNS has determined the percentage of a liability amount to be invested or following an appeal and recalculation by FNS of an amount to be invested, a

State agency shall submit a plan of offsetting investments in program administration activities intended to reduce error rates.

(1) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(i) The activity or activities must be directly related to error reduction in the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17(a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a Statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(ii) The program administration activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. Therefore, basic training of eligibility workers or a continuing correction action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(iii) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(2) The request shall include:

(i) A statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(ii) A detailed description of the planned program administration activity;

(iii) Planned expenditures, including time schedule and anticipated cost breakdown;

(iv) Anticipated impact of the activity, identifying the types of error expected to be affected;

(v) Documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(vi) A statement that the expenditures are not simply a reallocation of resources.

(3) A State agency may choose to begin expending State funds for any amount of the liability designated as ''new investment'' in the liability amount determination prior to any appeal. FNS reserves the right to approve whether the expenditure meets the requirements for new investment. Expenditures made prior to approval by the Department will be subject to approval before they are accepted. Once a new investment plan is approved, the State agency shall submit plan modifications to the Department for approval, prior to implementation.

(4) Each State agency which has part of a liability designated for new investment shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(i) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(ii) A detailed description of the actual activity; and

(iii) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(5) Any funds that the State agency's reports do not document as spent as specified in the new investment plan

may be recovered by the Department. Before the funds are withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(6) If the funds are recovered, the Department shall charge interest on the funds not spent according to the plan in accordance with paragraph (j) of this section.

(i) *At-risk money*. If appropriate, FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include administrative and judicial appeals pursuant to Section 14 of the Food and Nutrition Act. If a State agency, in the subsequent year, is again subject to a liability amount based on the national performance measure and the error rate issued to the State agency, the State agency will be required to remit to FNS any money designated as at-risk for the prior fiscal year in accordance with either the original liability amount or a revised liability amount arising from an appeal, as appropriate, within 30 days of the date of the final billing. The requirement that the State agency pay the at-risk amount for the prior year will be held in abeyance pending the outcome of any pending appeal for the subsequent liability. If the subsequent year's liability is reduced to $0, the at-risk money from for the prior fiscal year will not be required to be paid. If the subsequent year's liability is not reduced to $0, the State agency will be required to pay the at-risk money within 30 days of the date of the appeal decision. The amount of a State's at-risk money may be recovered through offsets to the State agency's letter of credit as identified in § 277.16(c) of this chapter. FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Claims Collection Standards (31 CFR Parts 900–904), depending upon the amount of the State's liability.

(j) *Interest charges*. (1) To the extent that a State agency does not pay an at-risk amount within 30 days from the date on which the bill for collection is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. If the State agency is notified that it failed to invest funds in accordance with an approved new investment plan, the State agency has 30 days from the date of receipt of notification of non-expenditure of new investment funds to pay the Department the amount of funds not so invested. If the State agency does not pay the Department the amount of funds not invested within 30 days from the date of receipt of the notification of non-expenditure, the State agency shall be liable for interest on the non-expended funds from the date on which the notification was received by the State agency. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.

(2) A State agency may choose to pay the amount designated as at-risk prior to resolution of any appeals. If the State agency pays such claim (in whole or in part) and the claim is subsequently overturned or adjusted through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accruing from the date the payment was received until the date the payment is returned.

(3) Any interest assessed under paragraph (j)(1) of this section shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues. The bond equivalent is the discount rate (*i.e.*, the price the bond is actually sold for as

opposed to its face value) determined by the weekly auction (*i.e.*, the difference between the discount rate and face value) converted to an annualized figure. The Secretary shall use the investment rate (*i.e.*, the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings shall be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims shall be averaged for the appropriate weeks.

[75 FR 33438, June 11, 2010]

§ 275.24 High performance bonuses.

(a) *General rule.* (1) FNS will award bonuses totaling $48 million for each fiscal year to State agencies that show high or improved performance in accordance with the performance measures under paragraph (b) of this section.

(2) FNS will award the bonuses no later than September 30th of the fiscal year following the performance measurement year.

(3) A State agency is not eligible for a bonus payment in any fiscal year for which it has a liability amount established as a result of an excessive payment error rate in the same year. If a State is disqualified from receiving a bonus payment under this paragraph (a)(3), and the State is not tied for a bonus, the State with the next best performance will be awarded a bonus payment.

(4) The determination whether, and in what amount, to award a performance bonus payment is not subject to administrative or judicial review.

(5) In determining the amount of the award, FNS will first award a base amount of $100,000 to each State agency that is an identified winner in each category. Subsequently, FNS will divide the remaining money among the States in each category (see paragraph (b) of this section) in proportion to the size of their caseloads (the average number of households per month for the fiscal year for which performance is measured).

(6) A State cannot be awarded two bonuses in the same category; the relevant categories are payment accuracy (which is outlined in paragraph (b)(1) of this section), negative error rate (which is outlined in paragraph (b)(2) of this section), or program access index (which is outlined in paragraph (b)(3) of this section). If a State is determined to be among the best and the most improved in a category, it will be awarded a bonus only for being the best. The next State in the best category will be awarded a bonus as being among the best States.

(7) Where there is a tie to the fourth decimal point for the categories outlined in paragraphs (b)(1) through (b)(4) of this section, FNS will add the additional State(s) into the category and the money will be divided among all the States in accordance with paragraph (a)(5) of this section.

(b) *Performance measures.* FNS will measure performance by and base awards on the following categories of performance measures:

(1) *Payment accuracy.* FNS will divide $24 million among the 10 States with the lowest and the most improved combined payment error rates as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) *Excellence in payment accuracy.* FNS will provide bonuses to the 7 States with the lowest combined payment error rates based on the validated quality control payment error rates for the performance measurement year as determined in accordance with this part.

(ii) *Most improved in payment accuracy.* FNS will provide bonuses to the 3 States with the largest percentage point decrease in their combined payment error rates based on the comparison of the validated quality control payment error rates for the performance measurement year and the previous fiscal year, as determined in accordance with this part.

(2) *Negative error rate.* FNS will divide $6 million among the 6 States with the lowest and the most improved negative error rates as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) *Lowest negative error rate.* FNS will provide bonuses to the 4 States with the lowest negative error rates based on the validated quality control negative error rates for the performance

year as determined in accordance with this part.

(ii) *Most improved negative error rate.* FNS will provide bonuses to the 2 States with the largest percentage point decrease in their negative error rates, based on the comparison of the performance measurement year's validated quality control negative error rates with those of the previous fiscal year, as determined in accordance with this part. A State agency is not eligible for a bonus under this criterion if the State's negative error rate for the fiscal year is more than 50 percent above the national average.

(3) *Program access index (PAI).* FNS will divide $12 million among the 8 States with the highest and the most improved level of participation as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section. The PAI is the ratio of participants to persons with incomes below 125 percent of poverty, as calculated in accordance with paragraph (b)(3)(iii) of this section (the PAI was formerly known as the participant access rate (PAR)).

(i) *High program access index.* FNS will provide bonuses to the 4 States with the highest PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(ii) *Most improved program access index.* FNS will provide bonuses to the 4 States with the most improved PAI as determined in accordance with paragraph (b)(3)(iii) of this section.

(iii) *Data.* For the number of participants (numerator), FNS will use the administrative annual counts of participants minus new participants certified under special disaster program rules by State averaged over the calendar year. For the number of people below 125 percent of poverty (denominator), FNS will use the Census Bureau's March Supplement to the Current Population Survey's (CPS) count of people below 125 percent of poverty for the same calendar year. FNS will reduce the count in each State where a Food Distribution Program on Indian Reservations (FDPIR) program is operated by the administrative counts of the number of individuals who participate in this program averaged over the calendar year. FNS will reduce the count in California by the Census Bureau's percentage of people below 125% of poverty in California who received Supplemental Security Income in the previous year. FNS reserves the right to use data from the American Community Survey (ACS) in lieu of the CPS, and to use the count of people below 130 percent of poverty, should these data become available in a timely fashion and prove more accurate. Such a substitution would apply to all States.

(4) *Application processing timeliness.* FNS will divide $6 million among the 6 States with the highest percentage of timely processed applications.

(i) *Data.* FNS will use quality control data to determine each State's rate of application processing timeliness.

(ii) *Timely processed applications.* A timely processed application is one that provides an eligible applicant the ''opportunity to participate'' as defined in §274.2 of this chapter, within thirty days for normal processing or 7 days for expedited processing. New applications that are processed outside of this standard are untimely for this measure, except for applications that are properly pended in accordance with §273.2(h)(2) of this chapter because verification is incomplete and the State agency has taken all the actions described in §273.2(h)(1)(i)(C) of this chapter. Such applications will not be included in this measure. Applications that are denied will not be included in this measure.

(iii) *Evaluation of applications.* Only applications that were filed on or after the beginning of the performance measurement (fiscal) year will be evaluated under this measure.

[70 FR 6322, Feb. 7, 2005]

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Sec.
276.1 Responsibilities and rights.
276.2 State agency liabilities.
276.3 Negligence or fraud.
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AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 276 are contained in §271.8.

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons and cash shall strictly be a State agency liability and the State agency shall pay to FNS, upon demand, the amount of the lost or stolen coupons or cash, regardless of the circumstances.

(2) State agencies shall be responsible for preventing losses or shortages of Federal funds in the issuance of benefits to households participating in the Program. FNS shall strictly hold State agencies liable for all losses, thefts and unaccounted shortages that occur during issuance, unless otherwise specified. Issuance functions begin with the State agency's creation of a record-for-issuance to generate each month's issuances from the master issuance file. Shortages or losses which result from any functions that occur prior to the creation of the record-for-issuance are subject to either paragraph (a)(3) of this section or subpart C—Quality Control (QC) Reviews, of part 275—Performance Reporting System.

(3) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Program. If FNS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Program, FNS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(4) State agencies shall be responsible for efficiently and effectively administering the Program by complying with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. A determination by FNS that a State agency has failed to comply with any of these provisions may result in FNS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FNS has the discretion to determine in each instance of noncompliance, whether to seek injunctive relief or to suspend or disallow administrative funds. FNS may seek injunctive relief *and* suspend or disallow funds simultaneously or in sequence.

(b) *Rights.* State agencies may appeal all claims brought against them by FNS and shall be afforded an administrative review by a designee of the Secretary as provided in § 276.7. State agencies may seek judicial review of any final administrative determination made by the Secretary's designee, as provided in § 276.7(j).

[54 FR 7016, Feb. 15, 1989]

§ 276.2 State agency liabilities.

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. All coupon issuance shall be documented, and the State agency shall make available to the Department all primary documentation (or secondary, if the primary has been inadvertently destroyed) when required to do so. State agencies shall pay to FNS, upon demand, the amount of any such losses.

(b) *Coupon shortages, losses, unauthorized issuances, overissuances and undocumented issuances.* (1) State agencies shall be strictly liable for:

(i) Coupon shortages and losses that occur any time after coupons have been accepted by receiving points within the State and that occur during storage or the movement of coupons between bulk storage point issuers and claims collection points within the State;

(ii) Losses resulting from authorization documents lost in transit from a manufacturer to the State agency and untransacted authorization documents lost in transit from an issuer to the State agency; and

(iii) The value of coupons overissued and coupons issued without authorization, except for those duplicate issuances in the correct amount that are the result of replacement issuances made in accordance with § 274.6. Overissuances and unauthorized issuances for which State agencies are liable include, but are not limited to: Single unmatched issuances, duplicates

made that are not in accordance with § 274.6, and transacted authorization documents that are altered, counterfeit, from out-of-State or expired (including those unsigned by the designated household member and/or not date stamped by the issuer).

(2) Coupon shortages and/or losses for which State agencies shall be held strictly liable include, but are not limited to, the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency cannot provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Issuances which cannot be supported by the required documentation;

(vi) Issuances made to households not currently certified;

(vii) Issuance loss during an official investigation, unless the investigation was reported *directly* to FNS prior to the loss; and

(viii) Unexplained causes.

(3) State agencies shall submit written reports on significant losses unless those losses were investigated by the Office of the Inspector General, USDA.

(4) A State agency shall be held strictly liable for mail issuance losses that are in excess of the tolerance level that corresponds to the preselected reporting unit. Each State agency shall select one of the three following units annually and report the selection as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii). Where reporting units issue less than $300,000 in mail issuance in a quarter, the State agency shall be liable for all losses in excess of $1,500 for the quarter.

(i) If a State agency elects to report and have liabilities based on an existing county or project area level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of five-tenths (.5) percent of the dollar value of each reporting unit's quarterly mail issuance. This level shall be used if the State agency does not designate one of the three levels herein by May 15, 1989, and by August 15 in years thereafter.

(ii) If a State agency elects to report and have liabilities based on an existing administrative level higher than the county or project area provided in paragraph (b)(4)(i) of this section, but lower than the Statewide level of mail issuance provided in paragraph (b)(4)(iii) of this section, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty-five hundreths (.35) percent per quarter of the dollar value of each reporting unit's quarterly mail issuance. State agencies shall not create new administrative units for the sole purpose of reporting mail issuance losses.

(iii) If a State agency elects to report and have liabilities based on a State level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty hundreths (.30) percent per quarter of the dollar value of each State agency's total quarterly mail issuance.

(iv) FNS reserves the right to make all determinations on reporting requirements and on administrative divisions within the State for the purpose of determining and assessing liability for mail issuance losses. FNS also reserves the right to revise such determinations as necessary. Revisions will be communicated to State agencies by FNS. The liability assessment will be based on the revised reporting requirement for the next full fiscal quarter.

(v) For the purpose of this section, ''mail issuance'' means all original coupon issuances distributed through the mail. ''Mail loss'' means all replacements of mail issuances except for replacements of returned mail issuances.

(vi) The State agency's liability shall be computed using data from Form FNS–259, Food Stamp Mail Issuance Report, or alternative reporting document accepted in advance by FNS and the State agency, which is submitted for the quarter for the particular reporting unit agreed to by FNS and the State agency, as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii).

(5) State agencies shall be held strictly liable for the following overissuances:

(i) The value of overissued coupons issued as a result of a State agency's failure to comply with a directive issued by FNS in accordance with the provisions of § 271.7, to reduce, suspend or cancel allotments;

(ii) The value of coupons overissued by the State agency as a result of a court order or settlement agreement of a court suit which was not reported to FNS in accordance with the provisions of § 272.4(e); and

(iii) The value of coupons overissued as a result of a State agency entering into an out-of-court settlement of a court suit, the terms of which violate Federal laws or regulations.

(6) Coupon shortages and losses shall be determined from the Form FNS–250, Food Coupon Accountability Report and its supporting documents and from the Form FNS–46, Issuance System Reconciliation Report. Losses of Federal moneys resulting from overissuances shall be determined from sources such as audits, Performance Reporting System Reviews, Federal reviews, investigations and explanatory reports prepared by the State agency.

(7) State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to unauthorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.

(c) *Cash Losses*. State agencies are liable to FNS for cash losses when money collected by State agencies from recipient claims has been lost, stolen or otherwise not remitted to FNS in accordance with the provision of § 273.18(l). The amount of such losses shall be determined from the sources outlined in paragraph (6) of this section.

(d) *State agency payment to FNS*. State agencies shall be billed for the exact amount of losses specified in this section. If a State agency fails to pay the billing, FNS shall offset the amount of loss from the State agency's Letter of Credit in accordance with § 277.16(c).

[54 FR 7016, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 57 FR 11259, Apr. 1, 1992; 57 FR 44791, Sept. 29, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 388, 65 FR 64589, Oct. 30, 2000; 75 FR 78154, Dec. 15, 2010]

§ 276.3 Negligence or fraud.

(a) *General*. If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, upon demand, pay to FNS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions*. (1) FNS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards Food Stamp Program requirements contained in the Food Stamp Act, the regulations issued pursuant to the Act, the FNS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from food stamp requirements contained in the Food Stamp Act, the food stamp regulations, the FNS-approved State Plan of Operation without first obtaining FNS approval, and the implementation of the procedures results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds due to negligence, FNS may use actual, documented amounts or amounts which have been determined through the use of statistically valid projections. When a statistically valid projection is used, the methodology will include a 95 percent, one-sided confidence level.

(3) FNS will base its determinations of negligence on information drawn from any of a number of sources. These information sources include, but are not limited to, State and Federal Performance Reporting reviews, State and Federal audits and investigations, State corrective action plans and any required reports.

(4) Failure by the State agency to remit payment upon demand, within the specified time period, may result in FNS recovering the lost funds through offsets to the State agency's Letter of Credit, in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand by FNS, within the time period specified, may result in offsets to the Letter of Credit in accordance with § 277.16(c).

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 356, 59 FR 29713, June 9, 1994]

§ 276.4 Suspension/disallowance of administrative funds.

(a) *General provisions.* (1) FNS shall make determinations of the efficiency and effectiveness of State agencies' administration of the Food Stamp Program in accordance with the provisions of § 275.25. When making such determinations, FNS shall use all information that is available relating to State agencies' administration of the Program. This information includes, but is not limited to, information received from Performance Reporting System reviews, Federal reviews, audits, investigations, corrective action plans, financial management reviews, and the public.

(2) FNS may determine a State agency's administration of the Program to be inefficient or ineffective if the State agency fails to comply with the food stamp requirements established by the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation.

(3) If FNS determines that a State agency's administration of the Program is inefficient or ineffective, FNS may warn the State agency that a suspension and/or disallowance of administrative funds is being considered. After a State agency receives a warning, FNS may either suspend or disallow administrative funds or take both actions in sequence, depending on the statement in the warning.

(b) *Suspension.* A suspension of funds is an action by FNS to temporarily withhold all or a portion of the Federal share of one or more of the cost categories of a State agency's budget for administration of the Food Stamp Program. Suspensions of funds shall remain in effect until FNS determines that a State agency has taken adequate corrective action to correct the problem causing the suspension, in which event the suspension will be rescinded, or until FNS decides to disallow the suspended funds. FNS shall suspend funds in accordance with § 277.16.

(c) *Disallowance.* (1) A disallowance of funds is an action by FNS in which reimbursement is denied for otherwise reimbursable administrative costs claimed by a State agency in one or more of the cost categories of a State agency's budget for Program administration.

(2) In accordance with § 277.16, FNS has the option of disallowing funds in another cost category, or all or a portion of the entire Letter of Credit if the disallowance is based on a finding that the State agency failed to take a required action. FNS may disallow funds after previously suspending such funds or may disallow funds immediately following the expiration of the formal warning under the conditions specified in paragraph (e) of this section.

(d) *Warning process.* Prior to taking action to suspend or disallow Federal funds, except those funds which are disallowed when a State agency fails to adhere to the cost principles of part 277 and appendix A, FNS shall provide State agencies with written advance notification that such action is being considered. If a State agency does not respond to such an advance notification to the satisfaction of FNS, FNS shall provide the State agency with a formal warning of the possibility of suspension or disallowance action. However, when a State agency fails to meet the objectives in a corrective action plan, FNS may omit the advance notification and immediately issue a formal warning.

(1) *Advance notification.* Immediately upon becoming aware that a deficiency or deficiencies in a State agency's administration of the Program may warrant the suspension and/or disallowance of Federal funds, FNS shall advise the State agency in writing of the deficiency and shall provide a specific period of time for correction of such deficiency or deficiencies. The time period allowed the State agency for corrective action will vary according to the nature of the deficiency.

(2) *Formal warning.* FNS shall issue a formal warning to a State agency if the State fails to correct to the satisfaction of FNS the deficiencies noted in an advance notification within the time specified in the advance notification. FNS may also issue a formal warning to a State agency without first issuing an advance notification if a State agency fails to comply with a corrective action plan.

(i) Formal warnings shall include the following information:

(A) Specific descriptions of the deficiencies, explaining how the State agency is out of compliance with Program requirements;

(B) A Statement as to whether Federal funds will be suspended, disallowed or both, if appropriate;

(C) The amount of Federal funds that will be suspended and/or disallowed or an estimate of the amount if actual cost are unavailable; and

(D) A statement of FNS' willingness to assist State agencies is resolving the deficiencies.

(ii) A State agency shall have 30 days from receipt of a formal warning to submit evidence that it is in compliance or to submit a corrective action proposal, including the date the State agency will be in compliance.

(iii) When the deficiency cannot be corrected within 30 days of receipt of a formal warning but the State agency submits an acceptable plan for correcting the deficiency, FNS shall hold the formal warning in abeyance pending completion of the actions contained in the plan within the time specified in the plan.

(iv) FNS shall cancel a formal warning when the State agency submits evidence that shows, to the satisfaction of FNS, that the deficiency has been eliminated.

(e) *Suspension/disallowance of funds.* The Administrator of FNS shall notify State agencies in writing by certified mail or through personal service that administrative funds are being suspended or disallowed. Such action may occur when any of the following situations arise:

(1) A State agency fails to respond to the deficiencies cited in a formal warning within 30 days of receiving the warning;

(2) The response by a State agency to the deficiencies cited in a formal warning is unsatisfactory to FNS; or

(3) A State agency fails to meet the commitments it made in its corrective action proposal and a formal warning had been held in abeyance pending completion of that corrective action.

(f) *Appeals.* After FNS has taken action to disallow Federal funds the State agency may request an appeal in accordance with the procedures specified in § 276.7.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 266, 52 FR 3410, Feb. 4, 1987]

§ 276.5 Injunctive relief.

(a) *General.* If FNS determines that a State agency has failed to comply with the Food Stamp Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operations, the Secretary may seek injunctive relief against the State agency to require compliance. The Secretary may request injunctive relief concurrently with negligence billings and sanctions against State agencies affecting administrative funds.

(b) *Requesting injunctive relief.* Prior to seeking injunctive relief to require compliance, FNS shall notify the State agency of the determination of noncompliance and provide the State agency with a specific period of time to correct the deficiency. The Secretary shall have the discretion to determine the time periods State agencies will have to correct deficiencies. If the State agency does not correct the failure within the specified time period and the Department decides to seek injunctive relief, the Secretary shall

refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

§ 276.6 Good cause.

(a) When a State agency has failed to comply with provisions of the Act, the regulations issued pursuant to the Act, or the FNS-approved State Plan of Operation, and, thus, is subject to the suspension/disallowance and injunctive relief provisions in §§ 276.4 and 276.5, FNS may determine that the State had good cause for the noncompliance. FNS shall evaluate good cause in these situations on a case-by-case basis, based on any one of the following criteria:

(1) Natural disasters or civil disorders that adversely affect Program operations;

(2) Strikes by State agency staff;

(3) Change in the Food Stamp Program or other Federal or State programs that result in a substantial adverse impact upon a State agency's management of the Program; and

(4) Any other circumstances in which FNS determines good cause to exist.

(b) If FNS determines that food cause existed for a State agency's failure to comply with required provisions and standards, FNS shall not suspend or disallow administrative funds nor seek injunctive relief to compel compliance with the provisions and standards.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980]

§ 276.7 Administrative review process.

(a) *General*. (1) Whenever FNS asserts a claim against a State agency, the State agency may appeal the claim by requesting an administrative review. FNS claims that may be appealed are billings resulting from financial losses involved in the acceptance, storage, and issuance of coupons (§ 276.2), billings based on charges of negligence or fraud (§ 276.3), and disallowances of Federal funds for State agency failures to comply with the Food Stamp Act, regulations, or the FNS-approved State Plan of Operations (§ 276.4).

(2) A State agency aggrieved by a claim shall have the option of requesting a hearing to present its position in addition to a review of the record and any written submission presented by the State agency. Unless circumstances warrant differently, hearings of appeals of negligence claims and disallowances of Federal funds shall be before an Appeals Board and hearings of appeals of other claims shall be before a single hearing official. In any case, the people reviewing the claim shall be people who were not involved in the decision to file the claim.

(b) *Notice of claim*. When asserting a claim against a State agency, FNS shall provide the notice to the State agency using any delivery method as long as the method provides evidence of the delivery.

(c) *Filing an appeal*. A State agency aggrieved by claims asserted against it may file written appeals with the Secretary, U.S. Department of Agriculture, c/o the Executive Secretary, State Food Stamp Appeals Board, Food and Nutrition Service, USDA, Washington, DC 20250, requesting an opportunity to present information in support of its position. The State agency shall attach a copy of the FNS claim to its appeal. Appeals must be filed with the Executive Secretary or postmarked within 10 days of the date of delivery of the notice of claim. If the State agency does not appeal within the prescribed 10-day period, the FNS decision on the claim shall be final. No extension shall be granted in the time allowed for filing an appeal.

(d) *Computation of time*. In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday.

(e) *Stay of administrative action*. With one exception, the filing of a timely appeal and request for administrative review shall automatically stay the action of FNS to collect the claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final determination has been issued. The exceptions to this provision are those claims

that are asserted against State agencies due to State agency failure to comply with an order to reduce, suspend or cancel benefits in accordance with § 271.7. In situations where a State agency does not reduce, suspend or cancel benefits as directed and FNS takes action to disallow administrative funds or bill the State agency, the disallowance and/or billing shall remain in effect during the review process. Should the Appeals Board uphold the State agency, all disallowed funds and/or funds collected as a result of the billing shall be restored to the State agency promptly.

(f) *Acknowledging an appeal.* Upon receipt of an appeal and request for administrative review, the Executive Secretary shall provide the State agency with a written acknowledgment of the appeal, including a statement of whether or not the appeal is timely and can be accepted. A copy of each acknowledgment shall be provided to FNS. The acknowledgment of a timely and acceptable appeal and request for administrative review shall also include a copy of Secretary's Memorandum No. 2003, Revised, ''State Food Stamp Appeals Board,'' and the identity of the Appeals Board member(s) designated by the Secretary to review the claim.

(g) *Submitting additional information.* (1) State agencies shall have 30 days from their request for an appeal to submit five sets of the following information to the Executive Secretary of the Appeals Board:

(i) A clear, concise identification of the issue or issues in dispute;

(ii) The State agency's position with respect to the issue or issues in dispute;

(iii) The pertinent facts and reasons in support of the State agency's position with respect to the issue or issues in dispute;

(iv) All pertinent documents, correspondence and records which the State agency believes are relevant and helpful toward a more thorough understanding of the issue or issues in dispute;

(v) The relief sought by the State agency;

(vi) The identity of the person(s) presenting the State agency's position when a hearing is involved; and

(vii) A list of prospective State agency witnesses when a hearing is involved.

(2) At the request of the Executive Secretary, FNS shall promptly submit five complete sets of all documents, correspondence and records compiled by FNS in support of its claim.

(3) The Executive Secretary shall provide each person hearing an appeal and FNS with a complete set of the State agency information when it is received. The Executive Secretary shall also provide each person hearing an appeal and the State agency with a complete set of the information supplied by FNS when it is received.

(h) *Scheduling and conducting hearings.* When a hearing is afforded, the Appeals Board or hearing official has up to 60 days from receipt of the State agency's information, outlined in paragraph (g) of this section, to schedule and conduct the hearing. The Executive Secretary shall advise the State agency of the time, date and location of the hearing at least 10 days in advance of the hearing. The State agency is solely responsible for ensuring the attendance of all State agency witnesses at the hearing.

(1) A hearing is an informal proceeding designed to permit the State agency an opportunity to present its position before a neutral third party. Because the final determination is subject to judicial review and trial *de novo*, the Appeals Board and hearing official shall not be bound by the rules of civil procedure applicable in the court or by the adjudicatory requirements of the Administrative Procedures Act.

(2) The Appeals Board Chairman, his designee or the hearing official is the presiding officer at the hearing. The presiding officer shall have full authority to ensure a fair and impartial proceeding, avoid delays, maintain order and decorum, receive evidence, examine witnesses, and otherwise regulate the course of the hearing. The State agency may represent itself at the hearing or be represented by counsel.

(3) The Appeals Board or hearing official shall receive into evidence the oral testimony of State agency witnesses

and any documents which are relevant and material. Neither the Department nor FNS is required to present witnesses at the hearing. However, the Department and FNS shall make staff available to provide any information or clarification requested by the Appeals Board or hearing official. Under no circumstances shall the Department or FNS introduce new evidence at the hearing. Departmental and FNS staff, as well as State agency witnesses, shall be subject to examination by the Appeals Board or hearing official. Departmental and FNS staff shall not be subject to cross-examination by State agency representative or counsel. Likewise, State agency witnesses shall not be subject to cross-examination by Departmental or FNS staff. Each side shall be permitted to make a closing statement to the Appeals Board or hearing official upon completion of the taking of evidence and testimony.

(4) FNS and the State agency shall have the opportunity to submit additional written information to the Appeals Board or hearing official within 10 days after the close of the hearing. No new factual material may be introduced except as it directly relates to evidence or testimony presented at the hearing. Five complete sets of such information must be filed with the Executive Secretary or postmarked prior to the expiration of the 10-day deadline for it to be considered.

(5) An official verbatim transcript of each hearing shall be kept on file in the Office of the Executive Secretary for public inspection. A copy shall be furnished to FNS and the State agency. Anyone wishing to purchase a copy may make arrangements to do so with the commercial reporting service involved.

(i) *Final determination.* (1) When a hearing is afforded, a final determination shall be made within 30 days of the hearing, and the final determination shall take effect 30 days after delivery of the notice of this final decision to the State agency. When a hearing is not held, a final determination shall be made within 30 days after receipt of the State agency's information. The final determination shall take effect 30 days after delivery of the notice of the final decision to the State agency.

(2) The Appeals Board or hearing official shall either uphold the claim, deny the claim, or adjust the claim downward in such amounts and for such reasons as the Appeals Board or hearing official shall determine and declare. The final determination is not subject to reconsideration.

(j) *Judicial review.* State agencies aggrieved by the final determination may obtain judicial review and trial *de novo* by filing a complaint against the United States within 30 days after the date of delivery of the final determination, requesting the court to set aside the final determination. The final determination shall remain in effect during the period the judicial review or any appeal therefrom is pending unless the court temporarily stays such administrative action after a showing that irreparable injury will occur absent a stay and that the State agency is likely to prevail on the merits of the case.

(k) *Extension of time.* (1) No extension of time shall be permitted a State agency in which to file an initial request for an administrative review. All other requests from the State agency or from FNS for the extension of any deadline contained in §276.7 of these regulations or imposed by the Appeals Board or hearing official shall be granted only for good cause shown and only when received by the Executive Secretary before the expiration of the particular deadline involved. All requests for an extension shall be in writing. Filing a request for an extension stops the running of the prescribed period of time. When a request for an extension is granted, the requester shall be notified in writing of the amount of additional time granted. When a request is denied for being untimely or for cause, the requester shall be notified and the prescribed period of time shall resume from the date of denial.

(2) The Appeals Board or hearing official may grant itself such additional time as it may reasonably require to complete any of its assigned responsibilities. If the Appeals Board or hearing official does find it necessary to grant itself an extension of time, the

Executive Secretary shall notify all parties in writing.

[Amdt. 168, 45 FR 77263, Nov. 21, 1980, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994; Amdt. 397, 70 FR 72354, Dec. 5, 2005]

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Sec.

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APPENDIX A TO PART 277—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO ADMINISTRATION OF THE FOOD STAMP PROGRAM BY STATE AGENCIES

AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: Amdt. 188, 45 FR 85702, Dec. 30, 1980, unless otherwise noted.

EDITORIAL NOTE: OMB control numbers relating to this part 277 are contained in § 271.8.

§ 277.1 General purpose and scope.

(a) *Purpose*. This part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the Food Stamp Program, and the Food Distribution Program and Food Stamp Program on Indian Reservations.

(b) *Scope and applicability*. Upon compliance with the provisions of this part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program and for administration of the Food Distribution Program on Indian Reservations. To ensure maximum practical uniformity, deviation(s) by a State agency from this part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this part must be authorized by the Administrator of FNS.

§ 277.2 Definitions.

For the purpose of this part the term:

Accrued expenditures means the charges incurred by the State agency during a given period for liabilities incurred, benefits received or for goods and services used during this period.

Accrued income means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

Acquisition cost refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

Disbursements refers to the transfer of funds by the state agency to pay for Program costs resulting from purchased or expired goods and services.

Expendable personal property means all tangible personal property other than nonexpendable property.

Program funds means money, or property provided in lieu of money, paid for or furnished by FNS to a State agency.

Funds available to the State agency may include contributions from third parties including other Federal agencies.

In-kind contributions refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of more than $300 per unit. A State agency may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

Obligations are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

Offset means a method to recover funds due FNS through use of the Letter of Credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

OMB means the Office of Management and Budget.

Personal property means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

Program means both the Food Stamp Program and the Food Distribution Program on Indian Reservations.

Program closeout means the process by which FNS determines that all applicable administrative and financial processes have been completed by the State agency and FNS terminates the program in the affected project area or areas.

Project costs are allowable costs as set forth in this part.

Real property means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

State agency means the organization as defined in 7 CFR 271.1.

State agency costs means the State agency outlays from its funds available for program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimbursable under this authority.

Subagency means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the program and which is accountable to the State agency for the use of funds provided.

Terms and conditions means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

Unliquidated obligation represents the amount of obligations not yet paid.

Unobligated balance means the portion of the Federal funds authorized less all allowable costs and unpaid obligations of the State agency.

§ 277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as specified in § 272.2. The application for funds and budget requirements for the Food Distribution Program on Indian Reservations shall be as specified in § 283.9. State agencies must submit a budget to FNS as part of the State Plan each fiscal year. Upon approval of the budget by FNS, administrative funds will be provided.

§ 277.4 Funding.

(a) *General*. This section sets allowable cost standards for activities of State agencies in administering the Food Stamp Program and Food Distribution Program on Indian Reservations.

(b) *Federal reimbursement rate*. The base percentage for Federal payment shall be 50 percent of State agencies'

allowable Food Stamp Program administrative costs. This rate includes reimbursement for food stamp informational activities but not for recruitment activities. Recruitment activities are those activities designed to persuade an individual who has made an informed choice not to apply for food stamps to change his or her decision and apply.

(1) Funding of demonstration projects approved by FNS will be at a rate agreed to by FNS in accordance with the requirements outlined in part 282.

(2) The reimbursement of administrative costs to State agencies administering the program on Indian reservations shall be in accordance with the requirements of parts 281 and 283.

(3) the federally funded share of administrative costs, as identified in paragraph (b) of this section may be decreased based upon its payment error rate as described in § 275.23. The rates of Federal funding for the activities identified in paragraphs (b)(1) and (b)(2) of this section shall not be reduced based upon the agency's payment error rate.

(4) Employment and training program grants, as outlined in § 273.7(d) shall be 100 percent federally-funded.

(c) *Matching costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other non-Federal public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable;

(2) Are not contributed for another federally-assisted program, unless authorized by Federal legislation;

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this part;

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable for reimbursement purposes under the Food Stamp Program. The value of services rendered by volunteers shall be allowable only to meet any matching administrative costs requirements for the Food Distribution Program on Indian Reservations.

(f) The expenses (e.g. travel, lodging, meals) of persons working with volunteer or nonprofit organizations which receive training and assistance pursuant to § 272.4(d)(2) are not allowable.

(g) Investigations of authorized retail or wholesale food concerns when performed in coordination with the USDA Office of Inspector General and FNS shall be funded at the 50 percent Federal reimbursement rate.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 277.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 277.5 Methods of payment.

(a) This section sets forth FNS methods for authorizing funds for State agencies.

(b) The ''Letter of Credit'' (LOC) (SF–1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least $120,000 per year and meet the requirements prescribed in OMB Circular A–102, Attachment J.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF–183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(d) State agencies not meeting the requirements for the LOC method of

payment or failing to meet LOC reporting requirements, including those requiring adjustments to cash balances to liquidate amounts owed to FNS, shall be provided funds by Treasury check in accordance with the provisions of Department of the Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to § 277.16. When a payment is withheld, payment adjustments will be made in accordance with § 277.16. When FNS collects an indebtedness, whether due to a disallowance or an offset for amounts which the State agency has been billed but which it has failed to pay without cause acceptable to FNS, FNS shall provide reasonable notice to the State agency, and shall require appropriate accounting adjustment to cash balances for which the State agency is accountable to the Federal government to liquidate the indebtedness.

§ 277.6 Standards for financial management systems.

(a) *General*. This section prescribes standards for financial management systems in administering program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities*. Financial management systems for program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its sub- agencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations as specified in § 277.16 and the disposition of these amounts. Accounting procedures must be in effect to prevent a State agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the State agency for all program funds, property, and other assets acquired with program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for program authorized purposes unless disposition has been made in accordance with § 277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in appendix A to this part.

(7) Support and source documents for costs.

(8) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 277.17.

(10) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(c) The standards in § 277.6(b) apply to subagencies or contractors involved with program funding.

§ 277.7 Cash depositories.

(a) The term ''cash depositories'' refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FNS shall not:

(1) Require physical segregation in a cash depository of program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which program funds are deposited by the State agency.

§ 277.8 Bonding and insurance.

(a) *General*. In administering FNS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FNS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan guarantees*. FNS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the program. State agencies shall not make any assurances to any lender or contractor that FNS will furnish funds for loan payments.

§ 277.9 Administrative costs principles.

(a) This section prescribes specific policies and procedures governing State agencies for funding under this part.

(b) The incremental cost of certifying TANF households for Food Stamp Program benefits are allowable costs for FNS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section.

(1) *Direct cost*. Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this part.

(2) *Indirect cost*. Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this part and appendix A.

(3) Direct and indirect costs claimed for program cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FNS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving program funds shall be submitted to FNS for review.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 385, 65 FR 33440, May 24, 2000]

§ 277.10 Program income.

(a) Program income is gross income resulting from activities financed with program funds. Such earnings exclude interest income but include income from service fees, usage or rental fees, sale of assets purchased with program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of program administrative funds shall be remitted to FNS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577) and advances to tribal organizations under the Indian Self-Determination Act (sections 102 through 104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Program funds shall be remitted to FNS or applied to the Federal share of current program costs in accordance with § 277.13. All other sales proceeds will be handled in accordance with § 277.13.

(d) Unless there is a prior agreement between FNS and the State agency, the State agency shall have no obligation to FNS with respect to royalties received from copyrights or patents produced as a result of activities financed with program administrative funds.

(e) Any other income earned under activities supported by program administrative funds may be retained by the State agency if they are deducted from the gross program administrative costs for the purposes of determining net costs and FNS's share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects.

§ 277.11 Financial reporting requirements.

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FNS.

(b) *Authorized forms and instructions.* (1) Only forms specified by this part, or other forms authorized by FNS, may be used for obtaining financial information from State agencies for the program.

(2) All instructions for use in connection with the form specified in § 277.11(c) shall be followed. FNS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FNS approves a waiver of this requirement.

(4) The forms and instructions in this part shall be available to the State agency and to the public upon request to FNS Regional Offices as set out in § 271.6(b).

(c) *Financial status report*—(1) *Form.* State agencies shall use the standard Financial Status Report (Form SF–269) to report program costs.

(2) *Frequency.* The report (Form SF–269) shall be required quarterly.

(3) *Exceptions.* Those State agencies that receive payments under the U.S. Treasury check system shall submit to FNS a Quarterly Report of Federal Cash Transactions (Form SF–272).

(4) *Due dates.* Quarterly reports shall be due April 30 (for the period January through March), July 30 (April through June), October 30 (July through September), January 30 (October through December). Final reports are due December 30 for all completed Federal fiscal years (October 1 through September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved, if necessary.

(d) *Time limit for State agencies to file claims.* (1) After the deadline in paragraph (c)(4) of this section for the final SF–269 report, State agencies shall use the form specified by FNS as needed within three years of the end of the Federal fiscal year to amend a prior expenditure report pertaining to such Federal fiscal year. The three-year reporting deadline may be extended by FNS if litigation, an audit, or a claim is unresolved at the end of the three-year period. The reporting form shall be used to amend prior expenditure reports, and to request reimbursement for any additional funding due, or to pay back to FNS any inadvertent prior overclaim. Requests for reimbursement will only be honored if the claim is filed within the timeframe in paragraph (d)(2) of this section. FNS reserves the right to bill State agencies for amounts due FNS resulting from an overclaim, even if no reporting form has been submitted.

(2) Subject to the availability of funds from the appropriation for the year in which the expenditure was incurred, FNS may reimburse State agencies for an allowable expenditure only if the State agency files a claim with FNS for that expenditure within two years after the calendar quarter in which the State agency (or local agency) incurred the cost. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(3) For Automated Data Processing (ADP) expenditures approved under § 277.18(c), subject to the availability of funds and required FNS approval related to the Advance Planning Document, FNS may reimburse State agencies for allowable expenditures at the appropriate rate in effect at the time the equipment or service was received only if the State agency files for a claim with FNS within two years after the calendar quarter in which the cost was incurred. FNS will consider non-cash expenditures such as depreciation to have been made in the quarter the expenditure was recorded in the accounting records of the State agency in accordance with generally accepted accounting principles.

(4) States wishing to request an extension of the deadline in paragraphs (d)(2) and (d)(3) of this section must submit the request in writing to FNS prior to the applicable deadline. The State agency's request for an extension must include a specific explanation, justification, and documentation of why the claim will be late and when the claim will be filed.

(5) The time limits in paragraphs (d)(2) and (d)(3) of this section will not apply to any of the following:

(i) Any claim for an adjustment to prior year costs previously claimed under an interim rate concept;

(ii) Any claim arising from an audit exception as defined in this section. An audit exception means a proposed adjustment by the Department to any expenditure claimed by a State agency by virtue of a Federal-or State-initiated audit. The audit must comply with the requirements of § 277.17 and 7 CFR part 3015, and must have been started within 3 years of the date of submission of the final SF–269 of the relevant Federal fiscal year to which it applies.

(iii) Any claim resulting from a court-ordered retroactive payment. However, this provision does not bind FNS to a State or Federal court decision when FNS was not a party to the action;

(iv) Any claim for which FNS determines there was good cause for the State agency's not filing it within the time limit. Good cause is lateness due to circumstances beyond the State agency's control such as Acts of God or documented action or inaction of the Federal Government. It does not include neglect or administrative inadequacy on the part of the State, State agency, legislature, or any of their offices or employees.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 385, 65 FR 33440, May 24, 2000]

§ 277.12 Retention and custody of records.

(a) *Retention period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using program funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any book, documents, papers and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FNS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on public access.* Unless required by laws, FNS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the administrative funding provided by FNS except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FNS.

§ 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FNS funds, and ownership rights or intangible personal property developed, in whole or in part, with FNS funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section. With respect to property covered by this section, FNS may not impose on State agencies any requirement (including property reporting requirements) not authorized by this section unless specifically required by Federal laws.

(b) *Nonexpendable personal property*—(1) *Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FNS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and dispositions set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the program as long as

there is a need for such property to accomplish the purpose of the program.

(ii) When there is no longer a need for the property to accomplish the purpose of the program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally-funded programs of FNS.

(B) Other federally-funded programs of USDA.

(C) Other federally-funded programs.

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than $1,000, the State agency may use the property without reimbursement to FNS.

(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FNS for the FNS share of the property. The amount of compensation shall be computed by applying the percentage of FNS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than $1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of $1,000 or more per unit, the State agency shall:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency, the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS's share $100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of title to certain property.* (1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of $1,000 or more which is to be wholly borne by FNS is unique, difficult, or costly to replace, FNS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FNS.

(2) Such reservation shall be subject to the following:

(i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FNS may not exercise the right to reserve until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FNS a continued need for such use in the program.

(4) To exercise the right, FNS must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FNS's right shall lapse, and the State agency shall

act in accordance with the applicable standards in paragraphs (b)(2) and (b)(3) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to FNS's disposition instructions.

(d) *Property management standards.* State agencies' property management standards for nonexpendable personal property covered by this section shall include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FNS funds used in the acquisition of the property, or sufficient information to be able to compute the percentage, if and when the property is disposed of.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property*—(1) *Title.* Title to expendable personal property, whose acquisition cost was borne in whole or in part by FNS, shall vest in the State agency.

(2) *Use.* The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(3) *Disposition.* When there is no longer a need for the property in the program and there is a residual inventory exceeding $1,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on non-federally sponsored activities; or,

(iii) Sell it.

(4) *Compensation.* FNS must be compensated for its share if the alternative in paragraph (e)(3)(i) of this section is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Patents and inventions.* If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FNS, such fact shall be promptly and fully reported to FNS. Unless there is prior agreement between the State agency and FNS on disposition of such items, FNS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Excecutive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in title 37 CFR, chapters I and II.

(g) *Copyrights.* When a program activity results in a book or other copyrightable materials, the author or State agency is free to copyright the work, but FNS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes

copyrights on ADP software as specified in appendix A.

§ 277.14 Procurement standards.

(a) *General.* This section establishes standards and guidelines for the procurement of supplies, equipment, construction and other services whose cost is borne in whole or in part by FNS program funds. These standards ensure that such materials are obtained in an effective and economical manner and in compliance with the provisions of applicable Federal law and Executive orders. No additional procurement standards will be imposed by FNS upon State agencies unless specifically required by Federal law, or Executive orders, or authorized by the Administrator for Federal Procurement Policy, Office of Management and Budget.

(1) These standards do not relieve the State agency of any contractual responsibilities under its contracts. The State agency is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to sources evaluations, protests, disputes and claims. FNS shall not substitute its judgment for that of the State agency unless the matter is primarily a Federal concern. Violations of laws shall be referred to the local, State or Federal authority having jurisdiction.

(2) State agencies shall use their own procurement procedures provided that procurements paid in whole or in part with FNS program funds meet the standards set forth in this part.

(b) *Review of proposed contracts.* State agencies shall submit proposed contracts and related procurement documents to FNS for preaward review and approval when:

(1) The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation;

(2) The procurement expected to exceed $10,000 specifies a ''brand name'' product; or

(3) FNS has determined that the State agency's procurement procedures or operation fails to comply with one or more significant aspects of this section.

(c) *Code of conduct.* The State agency shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts borne in whole or in part with FNS program funds. No employee, officer, or agent of the State agency shall participate in the selection, or in the award or administration of a contract supported in whole or in part by FNS program funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

(1) The employee, officer, or agent;

(2) Any member of his/her immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. State agencies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) *Procurement procedures.* The State agency shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by State agency officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or dividing the purchase into smaller units, to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analyses, to determine which approach would be the most economical. To foster greater economy and efficiency, State agencies

are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(e) *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.* (1) It is FNS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. State agency affirmative steps shall include the following:

(i) Including qualified small and minority businesses on solicitation lists.

(ii) Assuring that small and minority businesses are solicited whenever they are potential sources.

(iii) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(iv) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(v) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration, as appropriate.

(vi) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (e)(1) (i) through (v) of this section.

(2) State agencies shall take similar appropriate affirmative action in support of women's business enterprises.

(3) State agencies are encouraged to procure goods and services from labor surplus areas, as defined by the Department of Labor.

(4) FNS shall impose no additional regulations or requirements in the foregoing areas unless specifically mandated by law or Executive order.

(f) *Selection procedures.* All State agency procurement transactions shall be conducted in a manner that provides maximum open and free competition with this section. Procurement procedures shall not contain features which restrict or eliminate competition. The State agency shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Descriptions shall not, in competitive procurements, contain features which unduly restrict competition. Descriptions may include a statement of the qualitative nature of the material, product or service desired and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a ''brand name or equal'' description may be used to define the performance or requirements of the material, product or service desired. The specific features of the named brand which must be met by offerors shall be clearly stated. State agencies shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) State agencies shall make awards only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) *Procurement methods.* State agency procurements made in whole or in part with program funds shall be by one of the following methods:

(1) *Small purchase procedures* are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than $10,000. State agencies shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the program, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In *competitive sealed bids* (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for the State agency to use this method of procurement the following conditions, as a minimum, must prevail:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the State agency's business.

(C) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice by the State agency to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the State agency indicates that such discounts are generally taken.

(E) Any or all bids may be rejected by the State agency when there are sound documented business reasons in the best interest of the program.

(3) In *competitive negotiation*, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(iii) The State agency shall provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the State agency, price and other factors considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

(4) *Noncompetitive negotiation* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Awards of contracts by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive procurement;

(iii) FNS authorizes noncompetitive procurement; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(h) *Contract pricing.* The cost plus a percentage of cost and percentage of construction cost method(s) of contracting may not be used by a State agency. State agencies shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts, paid in whole or in part by FNS program funds, shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(i) *State agency procurement records.* State agencies shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the cost or price.

(j) *Contract provisions.* In addition to provisions defining a sound and complete procurement contract, State agencies shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by this provision, Federal law, or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by State agencies and their contractors or subagencies shall contain a provision requiring compliance with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (29 CFR part 60).

(4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each contractor or subagency shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to FNS.

(5) Where applicable, all contracts awarded by State agencies and subagencies in excess of $2,000 for construction contracts in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the work is compensated at a rate of not less than 1½ times the basic rate for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to

his health and safety as determined under construction, safety, and health standards promulated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) The contract shall include notice of FNS requirements and regulations pertaining to reporting and print rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of FNS requirements and regulations pertaining to copyrights and rights to data so derived.

(7) All negotiated contracts (except those awarded by small purchases procedures) awarded by State agencies shall include a provision to the effect that the State agency, FNS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. State agencies shall require contracts to maintain all required records for three years after the State agency makes final payments or all other pending matters are closed, whichever is last.

(8) Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency (EPA) regulations, which prohibit the use under nonexempt Federal contract, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the FNS and to the USEPA Assistant Administrator for Enforcement.

(9) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–165).

(k) *Contract administration.* State agencies shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 277.15 [Reserved]

§ 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation, FNS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with § 276.4. Adjustments will be made either by adjusting the Letter of Credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FNS may disallow costs in accordance with part 276 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FNS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation.

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this part and appendix A.

(c) *Offsets to the Letter of Credit.* (1) FNS may recover funds when owed by the State agency to FNS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FNS to be disallowed under the provisions of this part;

(ii) Unallowable costs resulting from audit or investigation findings;

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS; or

(iv) Amounts owed to FNS for title IV reimbursements and recipient claims collections which were reported on the FNS–209 and which the State agency has failed to pay.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FNS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program transfer or termination.* (1) When termination or transfer of a State program has been agreed upon by FNS, the following closeout procedure shall be observed:

(i) Upon request, FNS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FNS any unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of termination of the program, all required financial, performance, and other reports. FNS may grant extensions when requested by the State agency.

(iv) FNS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FNS. The amounts of such billings shall be promptly remitted to FNS.

(v) In the event a final audit has not been performed prior to the closeout of the program, FNS shall retain the right to disallow costs or recover funds resulting from the final audit findings.

(2) Provisions of § 277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 342, 59 FR 2733, Jan. 19, 1994]

§ 277.17 Audit requirements.

(a) *General.* This section sets forth the audit requirements for State agencies that receive FNS program funds. Audits shall be conducted on an organization-wide basis. Such audits are to determine whether:

(1) Financial operations are conducted properly;

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of Federal funds;

(4) Internal procedures have been established to meet the objectives of federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

Except where required by law, no additional requirements for audit will be imposed by FNS unless approved by the Office of Management and Budget (OMB). The provisions of this section do not limit the authority of FNS to make audits of State agencies, their subdivisions, and subcontracts. However, if independent audits arranged for by State agencies meet the requirements prescribed herein, FNS shall rely on them, and any additional audit work already done.

(b) *Audit standards.* (1) State agencies shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth in this section. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A–102, Attachment P.

(2) Audits shall be made in accordance with the General Accounting Office ''Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Program,'' and any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(c) *Purpose of audit.* Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance

with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues expenditures, assets, and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A–102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(d) *Audit coverage.* A representative number of charges to Federal funds shall be tested. The test shall be representative of:

(1) The universe of Federal funds received, and

(2) All cost categories that materially affect the award. The test is to determine whether the charges:

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatments and applied uniformly to both federally assisted and other activities of the State agency;

(iv) Were net of applicable credits;

(v) Did not include costs property chargeable to other federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Financial Management Circular 74–4;

(viii) Were incurred in accordance with competitive purchasing procedures, if covered by OMB Circular A–102, Attachment O; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(3) Audits usually will be made annually, but not less frequently than every two years.

(4) If the auditors become aware of irregularities in the State agency, subagency or subcontractor, the auditor shall promptly notify the cognizant agency and State agency management officials above the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds and other assets.

(e) *Audit report.* The audit report shall include:

(1) Financial statements, including footnotes, of the State agency, subagency, or subcontractor organization.

(2) The auditor's comments on the financial statements which should:

(i) Identify the statements examined and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amounts received for each program.

(iii) State that the audit was done in accordance with paragraph (d) of this section.

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditor's comments on compliance and internal control which should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulation that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements to Federal agencies.

(5) Comments on corrective action taken or planned by the State agency.

(f) *Record retention.* Work paper and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(g) *Cognizant agency responsibilities.* The cognizant agency shall have the following responsibilities:

(1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. If a non-Federal audit organization is responsible for audits of State agencies that have different cognizant audit agencies, a single quality assessment review will be arranged.

(2) Assure that all audit reports of State agencies that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

(3) Whenever significant inadequacies in an audit are disclosed, the State agency will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the State agency and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

(4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this section.

(5) Provide technical advice and act as a liaison between Federal agencies, independent auditors and State agencies.

(6) Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

(7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

(8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt the requirements in paragraphs (d) through (f) of this section. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for those reports described in paragraph (g) of this section.

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

(a) *Scope and application.* This section establishes conditions for initial and continuing authority to claim Federal financial participation (FFP) for the costs of the planning, development, acquisition, installation and implementation of ADP equipment and services used in the administration of the Food Stamp Program. Due to the nature of the procurement of ADP equipment and services, current State agency approved cost allocation plans for ongoing operational costs shall not apply to ADP system development costs under this section unless documentation required under paragraph (c) of this section is submitted to and approvals are obtained from FNS.

(b) *Definitions:*

Acceptance Documents means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

Advance Planning Document for Project Implementation or *Implementation APD* means a written plan of action requesting Federal financial participation (FFP) to acquire and implement ADP services and/or equipment.

Advance Planning Document for Project Planning or *Planning APD* means a

brief written plan of action that requests FFP to accomplish the planning necessary for a State agency to determine the need for and plan the acquisition of ADP equipment and/or services, and to acquire information necessary to prepare an Implementation APD.

Advance Planning Document Update (APDU) means an annual self-certification by the State agency on the status of project development activities and expenditures in relation to the approved Planning APD or Implementation APD. An APDU may also be submitted as needed to request funding approval for project continuation whenever significant project changes occur or are anticipated.

Automated Data Processing or *ADP* means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

Automated Data Processing Equipment or *hardware* means:

(1) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;

(2) All peripheral or auxiliary equipment used in support of electronic digital computers whether selected and acquired with the computer or separately;

(3) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic digital computer; and

(4) Data input equipment used to enter directly or indirectly into an electronic digital computer, peripheral or auxiliary equipment, or data transmission, or communication equipment.

Automated Data Processing Services means:

(1) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(2) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation. This includes system training, systems development, site preparation, data entry, and personal services related to automated systems development and operations that are specifically identified as part of a Planning APD or Implementation APD.

Data Processing means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording, and transmitting.

Emergency situation means a situation where:

(1) The State agency can demonstrate to FNS an immediate need to acquire ADP equipment or services in order to continue operation of the Food Stamp Program; and

(2) The State agency can clearly document that the need could not have been anticipated or planned for and the need prevents the State from following the prior approval requirements of § 277.18(c).

Feasibility Study means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems would warrant a substantial investment of staff, time, and money being requested, and whether the plan can be accomplished successfully.

Functional Requirements Specification means an initial definition of the proposed system, which documents the goals, objectives, user or programmatic requirements, the operating environment, and the proposed design methodology, e.g., centralized or distributed. This document details what the new system and/or hardware should do, not how it is to do it. The Specification document shall be based upon a clear and accurate description of the functional requirements for the project, and shall not, in competitive procurements, lead to requirements which unduly restrict competition.

General Systems Design means a combination of narrative and diagrams describing the generic architecture of a

system as opposed to the detailed architecture of the system. A general systems design may include a systems diagram; narrative identifying overall logic flow and systems functions; a description of equipment needed (including processing, data transmission and storage requirements); a description of other resource requirements which will be necessary to operate the system; a description of system performance requirements; and a description of the environment in which the system will operate, including how the system will function within that environment.

Regular funding or *regular FFP rate* means any Federal reimbursement rate authorized by § 277.4(b).

Request for Proposal or *RFP* means the document used for public solicitations of competitive proposals from qualified sources as outlined in § 277.14(g)(3).

Service Agreement means the document, described in § 277.18(f), signed by the State or local agency and the State or local central data processing facility whenever a central data processing facility provides ADP services to the State or local agency.

Software means a set of computer programs, procedures, and associated documentation used to operate the hardware.

System specifications means information about the new ADP systems, such as: Workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data, which is required to determine the ADP equipment and software necessary to implement the system design.

System study means the examination of existing information flow and operational procedures within an organization. The study consists of three basic phases: Data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(c) *General acquisition requirements—(1) Requirement for prior FNS approval.* A State agency shall obtain prior written approval from FNS as specified in paragraph (c)(2) of this section when it plans to acquire ADP equipment or services with proposed FFP that it anticipates will have total acquisition costs of $5 million or more in Federal and State funds. This applies to both competitively bid and sole source acquisitions. A State agency shall also obtain prior written approval from FNS of its justification for a sole source acquisition when it plans to acquire ADP equipment or services noncompetitively from a nongovernmental source which has a total State and Federal acquisition cost of more than $1 million but no more than $5 million. The State agency shall request prior FNS approval by submitting the Planning APD, the Implementation APD or the justification for the sole source acquisition signed by the appropriate State official to the FNS Regional Office. However, a State agency shall obtain prior written approval from FNS for the acquisition of ADP equipment or services to be utilized in an EBT system regardless of the cost of the acquisition.

(2) *Specific prior approval requirements.* (i) For ADP equipment and services acquisitions which require prior approval as specified in paragraph (c)(1) of this section, the State agency shall obtain the prior written approval of FNS for:

(A) The Planning APD prior to entering into contractual agreements or making any other commitment for acquiring the necessary planning services;

(B) The Implementation APD prior to entering into contractual agreements or making any other commitment for the acquisition of ADP equipment or services.

(ii) For ADP equipment and services acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, prior approval of the following documents associated with such acquisitions is also required:

(A) RFP's; unless specifically exempted by FNS, the State agency shall obtain prior written approval of the RFP before the RFP may be released. However, RFPs costing up to $5 million for competitive procurements and up to $1 million for noncompetitive acquisitions from non-governmental sources and which are an integral part of the approved APD need not be submitted

to FNS. States will be required to submit RFPs under this threshold amount on an exception basis or if the procurement strategy is not adequately described and justified in an APD. The State agency shall obtain prior written approval from FNS for Request for Proposals which are associated with an EBT system regardless of the cost.

(B) Contracts; unless specifically exempted by FNS, the State agency shall obtain prior written approval before the contract may be signed by the State agency. However, contracts costing up to $5 million for competitive procurements and up to $1 million for noncompetitive acquisitions from nongovernmental sources, and which are an integral part of the approved APD need not be submitted to FNS. States will be required to submit contracts under this threshold amount on an exception basis or if the procurement strategy is not adequately described and justified in an APD. The State agency shall obtain prior written approval from FNS for contracts which are associated with an EBT system regardless of the cost.

(C) Contract amendments; unless specifically exempted by FNS, the State agency shall obtain prior written approval before the contract amendment may be signed by the State agency. However, contract amendments involving cost increases of up to $1 million or time extensions of up to 120 days, and which are an integral part of the approved APD need not be submitted to FNS. States will be required to submit contract amendments under these threshold amounts on an exception basis or if the contract amendment is not adequately described and justified in an APD. Amendments to contracts for EBT systems shall be permitted within the approved funding cap. State agencies shall submit copies of any contract amendments or contract extensions to FNS with an accompanying analysis of the impact the changes would have upon the approved issuance cap.

(iii) The State agency must obtain prior written approval from FNS as specified in paragraphs (c)(2) (i) and (ii) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(3) *Approval requirements.* (i) For ADP equipment and service acquisitions requiring prior approval as specified in paragraph (c)(1) of this section, the State agency shall submit the following documents to FNS for approval:

(A) Feasibility studies, when specifically required by FNS as a condition of approving the Planning APD. When required by FNS for approval, the State agency shall submit the feasibility study no later than 90 days after its completion.

(B) APD Updates, as required by paragraph (e) of this section, on an annual or as needed basis.

(ii) The State agency must obtain FNS approval of the documents specified in paragraph (c)(3)(i) of this section in order to claim and receive reimbursement for the associated costs of the ADP acquisition.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submission for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and services not requiring prior approval by FNS.

(5) *Prompt action on requests for prior approval.* FNS will reply promptly to State requests for prior approval. If FNS has not provided written approval, disapproval or a request for additional information within 60 days of FNS' letter acknowledging receipt of the State's request, the request will be deemed to have provisionally met the prior approval requirement in paragraph (c) of this section. However, provisional approval will not exempt a State from having to meet all other Federal requirements which pertain to the acquisition of ADP equipment and services. Such requirements remain subject to Federal audit and review.

(d) *APD content requirements*—(1) *Planning APD.* The State agency may request FFP for the costs of determining the need for and planning the acquisition of ADP equipment or services through the submission of the Planning APD. The State agency may request FFP for the costs of planning activities beginning with initial project inception through the performance of necessary systems and alternatives analyses, selection and design,

including the completion of a general systems design. The Planning APD shall contain the following information:

(i) The State agency's description of the programmatic and organizational needs and/or problems to be addressed by the proposed ADP acquisition and the specific objectives to be accomplished under the Planning APD;

(ii) The State agency's commitment to complete the following, where appropriate, as part of project planning activities: a functional requirements specification document, feasibility study, alternatives analysis, cost-benefit analysis, and a general system design. If an existing ADP system is to be transferred, the State agency may plan to use the general system design of the transferred system.

(iii) The State agency's description of the organization, required State and contractual resources and availability of those resources, and the assignments of roles and responsibilities for project planning activities. The State agency shall include a description of resources to be procured and procurement methods;

(iv) The State agency's schedule of activities and deliverables during project planning, including a description and schedule of procurement activities to be undertaken in support of the planning project; and

(v) A proposed budget which shall identify costs for project planning activities by Federal fiscal year. The budget shall include an estimate of prospective cost distribution to participating Federal agencies and the method for cost allocation. The State agency shall also include an estimate of the total project costs, including both the cost of the planning project and the cost of any eventual ADP equipment and/or services acquisition, which will be used only for determining whether the threshold of §§277.18(c)(1) is met. An estimate of total project cost for an EBT system shall not be required to be incorporated into the Planning APD budget.

(2) *Implementation APD.* The State agency may request FFP to acquire ADP equipment and services through the submission of the Implementation APD. The State agency may request FFP for the necessary activities to develop, acquire, install and implement the proposed ADP system or acquisition. The Implementation APD shall contain the following information, where appropriate:

(i) The State agency shall complete and submit a functional requirements specification document;

(ii) The State agency shall submit a feasibility study and associated alternatives analyses, which include the transfer or modification of an existing system from a similar State or jurisdiction in the examination of alternatives. State agencies which reject the transfer or modification of an existing system must provide an analysis describing the barriers to system transfer as part of the feasibility study. The analysis of barriers to system transfer shall include a comparison of the costs of overcoming the problem in transferring an operational system to the costs of developing a new system;

(iii) The State agency shall submit the new or transferred general systems design and shall also document the intended approaches, plans and techniques to develop or modify specific aspects of the proposed ADP system or acquisition including hardware, software, telecommunications, system testing, and data security;

(iv) The State agency shall describe the anticipated resource requirements for implementation of the ADP project, the resources planned to be available for the project, and plans for augmenting resources to meet resource requirements;

(v) The State agency shall indicate the principal events and schedule of activities, milestones, and deliverables during implementation of the project;

(vi) The State agency shall submit a proposed budget which identifies costs for intended project development and implementation activities by Federal fiscal year and shall include a consideration of all possible Implementation APD activity costs (e.g., system conversion, computer capacity planning, supplies, training, and miscellaneous ADP expenses). The budget shall contain an estimate of prospective cost distribution and methods for allocating costs to participating Federal agencies;

(vii) The State agency shall document the scope, methodology, evaluation criteria and results of cost-benefit analyses for evaluating the selected design and alternatives. The cost-benefit analysis shall include a statement indicating the period of time the State agency intends to use the proposed equipment or system; and

(viii) The State agency shall describe the security and interface requirements to be employed and the backup and contingency procedures available.

(3) *APD Budget*. The proposed budget for both the Planning APD and the Implementation APD shall include cost distribution plans containing the bases for proposed rates, both direct and indirect, for costs associated with system planning, development, acquisition or implementation, as appropriate. The budget proposals accompanying the Implementation APD shall also include proposed cost distribution plans and the bases of proposed rates for the operation of the ADP system. The budget activities shall be presented on a Federal fiscal year basis in a clear fashion to associate costs with each planned activity. The budgets must identify all development costs separately from any ongoing operational costs. Costs must be distinguished by developmental projects and developmental time periods. Actual costs claimed must be reconciliable to projected costs as proposed and approved by FNS in the APD.

(e) *APD Update*—(1) *General submission requirements*. The State agency shall submit an APD Update for FNS approval for all approved Planning and Implementation APD's when total acquisition costs exceed $5 million. The APD Update shall be submitted to the FNS Regional Office within 90 days after the annual anniversary date of the original APD approval, unless the submission date is specifically altered by FNS.

(2) *Content requirements*. The APD Update represents a self-certification by the State agency of project status in relation to the provisions of the approved Planning APD and Implementation APD. The Annually Updated APD shall include:

(i) Project activity status. (A) The status of all major tasks and milestones in the approved Planning APD, Implementation APD or previous APD Update's for the past year. The APD Update shall include all major tasks and milestones completed in the past year and degree of completion for unfinished tasks.

(B) The status of all project deliverables completed in the past year and degree of completion for unfinished products.

(C) Reports of past and/or anticipated problems or delays in meeting target dates in the approved Planning APD, Implementation APD or previous APD Update's for the remainder of the project. The Annually Updated APD shall include an explanation of the need to extend any major project target dates.

(ii) Project expenditures. (A) A detailed accounting for all expenditures for project development over the past year.

(B) An explanation of differences between projected expenses in the approved Planning or Implementation APD, or previous APD Update's, and actual expenditures for the past year. If changes in costs are reported, FNS may require the submission of a revised cost-benefit analysis as a condition for approval of the APD Update.

(C) Changes to the allocation basis in the approved APD's cost allocation methodology.

(iii) Changes to the approved APD.

(A) Revised language for all changes to the approved APD or previous APD Updates shall be submitted as part of the APD Update, unless submitted separately by the State agency as the changes occurred throughout the year.

(B) Changes in project management and/or contractor services.

(3) *Submission as needed*. In addition to the requirement for approval of an APD Update on an annual basis, as specified in paragraph (e)(1) of this section, the State agency may submit an APD Update on a more frequent or as needed basis, in order to obtain a commitment of FFP whenever significant project changes occur. Without such approval, the State agency is at risk for funding of project activities which are not in compliance with the terms and conditions of the approved APD

and subsequently approved APD Updates, until such time as approval is specifically granted by FNS. At a minimum, the State agency should consider submission of an APD Update whenever any of the following changes occur or are anticipated:

(i) A significant increase ($1 million or more) in total project costs;

(ii) A significant schedule extension (60 days or more) for major milestones;

(iii) A significant change in procurement approach, and/or scope of procurement activities beyond that approved in the APD;

(iv) A change in system concept, or a change to the scope of the project; or

(v) A change to the approved cost allocation methodology.

(f) *Service agreements*. The State agency shall execute service agreements when data processing services are to be provided by a State central data processing facility or another State or local agency. Service agreements shall be kept on file by the State agency and be available for Federal review, and shall:

(1) Identify the ADP services that will be provided;

(2) Include, preferably as an amendable attachment, a schedule of charges for each identified ADP service, and a certification that these charges apply equally to all users;

(3) Include a description of the method(s) of accounting for the services rendered under the agreement and computing services charges;

(4) Include assurances that services provided will be timely and satisfactory;

(5) Include assurances that information in the computer system as well as access, use and disposal of ADP data will be safeguarded in accordance with provisions of §§ 272.1(c) and 277.13;

(6) Require the provider to obtain prior approval pursuant to § 277.18(c)(1) from FNS for ADP equipment and ADP services that are acquired from commercial sources primarily to support the Food Stamp Program and requires the provider to comply with § 277.14 for procurements related to the service agreement. ADP equipment and services are considered to be primarily acquired to support the Food Stamp Program when the Program may reasonably be expected to either be billed for more than 50 percent of the total charges made to all users of the ADP equipment and services during the time period covered by the service agreement, or directly charged for the total cost of the purchase or lease of ADP equipment or services;

(7) Include the beginning and ending dates of the period of time covered by the service agreement; and

(8) Include a schedule of expected total charges to the Program for the period of the service agreement.

(g) *Conditions for receiving FFP*—(1) A State agency may receive FFP at the 50 percent reimbursement rate for the costs of planning, design, development or installation of ADP and information retrieval systems if the proposed system will:

(i) Assist the State agency in meeting the requirements of the Food Stamp Act;

(ii) Meet the program standards specified in § 272.10(b)(1), (b)(2), and (b)(3) of this chapter, except for the requirements in § 272.10(b)(2)(vi), (b)(2)(vii), and (b)(3)(ix) of this chapter to eventually transmit data directly to FCS;

(iii) Be likely to provide more efficient and effective administration of the program; and

(iv) Be compatible with such other systems utilized in the administration of State agency plans under the program of Temporary Assistance for Needy Families (TANF).

(2) State agencies seeking FFP for the planning, design, development or installation of automated data processing and information retrieval systems shall develop Statewide systems which are integrated with TANF. In cases where a State agency can demonstrate that a local, dedicated, or single function (issuance or certification only) system will provide for more efficient and effective administration of the program, FNS may grant an exception to the Statewide integrated requirement. These exceptions will be based on an assessment of the proposed system's ability to meet the State agency's need for automation. Systems funded as exceptions to this rule, however, should be capable to the extent necessary, of an automated data exchange with the State agency system

used to administer TANF. In no circumstances will funding be available for systems which duplicate other State agency systems, whether presently operational or planned for future development.

(h) *Emergency acquisition requirements.* The State agency may request FFP for the costs of ADP equipment and services acquired to meet emergency situations which preclude the State agency from following the prior approval requirements of § 277.18(c). FNS may provide FFP in emergency situations if the following conditions are met:

(1) The State agency must submit a written request to FNS prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and shall include:

(i) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(ii) A brief description of the circumstances which result in the State agency's need to proceed with the acquisition prior to obtaining formal FNS approval; and

(iii) A description of the adverse impact which would result if the State agency does not immediately acquire the ADP equipment and/or services.

(2) Upon receipt of a written request for emergency acquisition FNS shall provide a written response to the State agency within 14 days. The FNS response shall:

(i) Inform the State agency that the request has been disapproved and the reason for disapproval; or,

(ii) Inform the State agency that FNS recognizes that an emergency situation exists and the State agency must submit a formal request for approval by FNS which includes the information specified at § 277.18(d)(2) within 90 days from the date of the State agency's initial written request.

(iii) If FNS approves the request submitted under paragraph (h)(1) of this section, FFP will be available from the date the State agency acquires the ADP equipment and services.

(i) *Cost determination and claiming costs*—(1) *Cost determination.* Actual costs must be determined in compliance with an FNS approved budget and appendix A to this part, and must be reconcilable with the FNS funding level. There shall be no payments pursuant to this section to the extent that a State agency is reimbursed for such costs pursuant to any other Federal program or uses ADP systems for purposes not connected with the Food Stamp Program. The State agency approved cost allocation plan must be amended to disclose the methods which will be used to identify and classify costs to be claimed. This methodology must be submitted to FNS as part of the request for FNS approval of funding as required in paragraph (d)(3) of this section. Any costs funded pursuant to these regulations shall be excluded in determining the State agency's administrative costs under any other section of this part.

(2) *Cost identification for purposes of FFP claims.* State agencies shall assign and claim the costs incurred under an approved APD in accordance with the following criteria:

(i) *Development costs.* Using its normal departmental accounting system, the State agency shall specifically identify what items of costs constitute development costs, assign these costs to specific project cost centers, and distribute these costs to funding sources based on the specific identification, assignment and distribution outlined in the approved APD. The methods for distributing costs set forth in the APD should provide for assigning identifiable costs, to the extent practicable, directly to program/functions. The State agency shall amend the cost allocation plan required by § 277.9 to include the approved APD methodology for the identification, assignment and distribution of the development costs.

(ii) *Operational costs.* Costs incurred for the operation of an ADP system shall be identified and assigned by the State agency to funding sources in accordance with the approved cost allocation plan required by § 277.9.

(iii) *Service agreement costs.* States that operate a central data processing facility shall use their approved central service cost allocation plan required by OMB Circular A–87 to identify and assign costs incurred under service agreements with the State agency. The State agency shall then distribute these costs to funding

sources in accordance with paragraphs (i)(2)(i) and (i)(2)(ii) of this section.

(3) *Capital expenditures.* The State agency shall charge the costs of ADP equipment having unit acquisition costs or total aggregate costs, at the time of acquisition, of more than $25,000 by means of depreciation or use allowance, unless a waiver is specifically granted by FNS. If the equipment acquisition is part of an APD that is subject to the prior approval requirements of paragraph (c)(2) of this section, the State agency may submit the waiver request as part of the APD.

(4) *Claiming costs.* Prior to claiming funding under this section the State agency shall have complied with the requirements for obtaining approval and prior approval of § 277.18(c).

(5) *Budget authority.* FNS approval of requests for funding shall provide notification to the State agency of the budget authority and dollar limitations under which such funding may be claimed. FNS shall provide this amount as a total authorization for such funding which may not be exceeded unless amended by FNS. FNS's determination of the amount of this authorization shall be based on the budget submitted by the State agency. Activities not included in the approved budget, as well as continuation of approved activities beyond scheduled deadlines in the approved plan, shall require FNS approval of an amended State budget for payment. Requests to amend the budget authorization approved by FNS shall be submitted to FNS prior to claiming such expenses.

(j) *Procurement requirements.* (1) Procurements of ADP equipment and services are subject to the procurement standards prescribed by § 277.14 regardless of any conditions for prior approval, except the requirements of § 277.14(b)(1) and (2) regarding review of proposed contracts. Those standards include a requirement for maximum practical open and free competition regardless of whether the procurement is formally advertised or negotiated.

(2) The standards prescribed by § 277.14, as well as the requirement for prior approval, apply to ADP services and equipment acquired by a State or local agency, and the ADP services and equipment acquired by a State or local central data processing facility primarily to support the Food Stamp Program.

(3) The competitive procurement policy prescribed by § 277.14 shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(k) *Access to the system and records.* Access to the system in all aspects, including but not limited to design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State agency to FNS or its authorized representatives at intervals as are deemed necessary by FNS, in order to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in suspension and/or termination of Food Stamp Program funds for the costs of the system and its operation.

(l) *Ownership rights*—(1) *Software*(i) The State or local government shall include a clause in all procurement instruments which provides that the State or local government shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed with FFP under this section.

(ii) FNS reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(iii) Proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (l)(1)(i) and (l)(1)(ii) of this section. FFP is not available for proprietary applications software developed specifically for the Food Stamp Program.

(2) *Automated data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which appear at 7 CFR

277.13 are applicable to automated data processing equipment.

(m) *Use of ADP systems.* ADP systems designed, developed or installed with FFP shall be used for the period of time specified in the APD, unless FNS determines that a shorter period is justified.

(n) *Basis for continued Federal financial participation.* FNS will continue FFP at the levels approved in the Planning APD and the Implementation APD provided that project development proceeds in accordance with the conditions and terms of the approved APD and that ADP resources are used for the purposes authorized. FNS will use the APD Update to monitor ADP project development. The submission of the report prescribed in § 277.18(e) for the duration of project development is a condition for continued FFP. In addition, periodic onsite reviews of ADP project development and State and local agency ADP operations may be conducted by or for FNS to assure compliance with approved APD's, proper use of ADP resources, and the adequacy of State or local agency ADP operations.

(o) *Disallowance of Federal financial participation.* If FNS finds that any ADP acquisition approved under the provisions of § 277.18(c) fails to comply with the criteria, requirements, and other undertakings described in the approved or modified APD, payment of FFP may be disallowed.

(p) *ADP system security requirements and review process*—(1) *ADP system security requirements.* State and local agencies are responsible for the security of all ADP projects under development, and operational systems involved in the administration of the Food Stamp Program. State and local agencies shall determine appropriate ADP security requirements based on recognized industry standards or standards governing security of Federal ADP systems and information processing.

(2) *ADP security program.* State agencies shall implement and maintain a comprehensive ADP Security Program for ADP systems and installations involved in the administration of the Food Stamp Program. ADP Security Programs shall include the following components.

(i) Determination and implementation of appropriate security requirements as prescribed in paragraph (p)(1) of this section.

(ii) Establishment of a security plan and, as appropriate, policies and procedures to address the following areas of ADP security:

(A) Physical security of ADP resources;

(B) Equipment security to protect equipment from theft and unauthorized use;

(C) Software and data security;

(D) Telecommunications security;

(E) Personnel security;

(F) Contingency plans to meet critical processing needs in the event of short- or long-term interruption of service;

(G) Emergency preparedness; and

(H) Designation of an Agency ADP Security Manager.

(iii) Periodic risk analyses. State agencies shall establish and maintain a program for conducting periodic risk analyses to ensure that appropriate, cost-effective safeguards are incorporated into new and existing systems. In addition, risk analyses shall be performed whenever significant system changes occur.

(3) *ADP system security reviews.* State agencies shall review the ADP system security of installations involved in the administration of the Food Stamp Program on a biennial basis. At a minimum, the reviews shall include an evaluation of physical and data security, operating procedures, and personnel practices. State agencies shall maintain reports of their biennial ADP system security reviews, together with pertinent supporting documentation, for Federal on-site review.

(4) *Applicability.* The security requirements of this section apply to all ADP systems used by State and local governments to administer the Food Stamp Program.

(5) *Costs*. Costs incurred for complying with the provisions of paragraphs (p)(1) through (p)(3) of this section are considered regular administrative costs which are funded at the regular FFP level.

[Amdt. 319, 55 FR 4355, Feb. 7, 1990, as amended by Amdt. 345, 57 FR 11259, Apr. 1, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 368, 61 FR 33643, June 28, 1996; Amdt. 385, 65 FR 33440, May 24, 2000]

APPENDIX A TO PART 277—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO ADMINISTRATION OF THE FOOD STAMP PROGRAM BY STATE AGENCIES

This appendix sets forth the procedures implementing uniform requirements for the negotiations and approval of cost allocation plans with State agencies, in accordance with the provisions of Federal Management Circular (FMC) 74–4 and OASC–10, ''Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government,'' U.S. Department of Health, Education, and Welfare. This material is adapted substantially from the circular; changes have been made only when necessary in order to conform with legislative constraints.

(A) Purpose and scope.

(1) *Objectives*. This appendix sets forth principles for determining the allowable costs of administering the Food Stamp Program by State agency under FNS-approved State Plans of Operation. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of the Program. They are designed to provide that all federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

(2) *Policy guides*. The application of these principles is based on the fundamental premises that:

(a) State agencies are responsible for the efficient and effective administration of the Food Stamp Program through the application of sound management practice.

(b) The State agency assumes the responsibility for seeing that Food Stamp Program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each State agency, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques as may be necessary to assure proper and efficient administration.

(3) *Application*. These principles will be applied by FNS in determining costs incurred by State agencies receiving FNS payments for administering the Food Stamp Program.

(B) Definitions.

Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs of program administration together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to FNS as a discharge of the State agency's accountability for FNS funds.

Cost center means a pool, summary account, objective or area established for the accumulation of costs. Such areas include objective organizational units, functions, objects or items of expense, as well as ultimate cost objective(s) including specific costs, products, projects, contracts, programs and other operations.

Federal agency means FNS and also any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

Payments for administrative costs means reimbursement or advances for costs to State agencies pursuant to any agreement whereby FNS provides funds to carry out programs, services, or activities in connection with administration of the Food Stamp Program. The principles and policies stated in this appendix as applicable to program payments in general also apply to any State agency obligations under a cost reimbursement type of agreement performed by a subagency, including contracts and subcontracts.

Food Stamp Program administration means those activities and operations of the State agency which are necessary to carry out the purposes of the Food Stamp Act, including any portion of the Program financed by the State agency.

Local unit means any political subdivision of government below the State level.

Other agencies of the State means departments or agencies of the State or local unit which provide goods, facilities, and services to a State agency.

Subagencies means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food

Stamp Program and which is accountable to the State agency for the use of the funds provided.

Service, as used herein, means goods and facilities, as well as services.

Supporting services means auxiliary functions necessary to sustain the direct effort of administering the Program. These services may be centralized in the State agency or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

(C) Basic guidelines.

(1) Factors affecting allowability of costs. To be allowable under the Program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the Program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal Laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the State agency is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost to any other federally financed program in either the current or a prior period.

(g) Be the net of all applicable credits.

(2) Allocable costs.

(a) A cost allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular program or cost objective under these principles may not be shifted to other Federal programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to the Program, an allocation plan will be required as prescribed in section I of these principles.

(3) Applicable credits.

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than FNS to finance operations or capital items donated or financed by the Federal Government to fulfill matching requirements under another program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given program.

(D) Composition of cost.

(1) *Total cost*. The total cost of a program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credit.

(2) *Classification costs*. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a program or other ultimate cost objective. However, it is essential that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under the Program are provided in the section which follows.

(E) Direct costs.

(1) *General*. Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to the Program, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in the course to programs and other ultimate costs objectives.

(2) *Application*. Typical direct costs chargeable to the Program are:

(a) Compensation of employees for the time and effort devoted specifically to the administration of the Program.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the Program.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specifically for efficiently and effectively administering the Program.

(e) Service furnished specifically for the Program by other agencies, provided such charges are consistent with criteria outlined in section G of these principles.

(F) Indirect costs.

(1) *General*. Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the result achieved. The term indirect cost as used herein applies to

costs of this type originating in the State agency, as well as those incurred by other departments in supplying goods, services, and facilities, to the State agency. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a State agency or in other agencies providing services to a State agency. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

(2) *State agency indirect costs.* All State agency indirect costs, including the various levels of supervision, are eligible for allocation to the program provided they meet the conditions set forth in their principles. In lieu of determining the actual amount of State agency indirect cost allocable to the program the following methods may be used:

(a) *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to program administration may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties to reach an informed judgment (1) as to the probable level of indirect costs in the State agency during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

(b) *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a State agency's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the State agency before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

(3) *Limitation on indirect costs.*

(a) Some Federal programs may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor programs of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such program does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under these principles, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under a program may not be shifted to another federally sponsored program or contract.

(G) Cost incurred by other agencies of the State.

(1) *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

(2) *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by other agencies of the State, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

(a) *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by other agencies of the State (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F(2)(a) of these principles.

(H) Cost incurred by State agency for others. The principles provided in section G will also be used in determining the cost of services provided by the State agency to another agency.

(I) Cost allocation plan.

(1) A cost allocation will be required to support the distribution of any indirect costs. All costs allocable to the Food Stamp Program under cost allocation plans will be supported by formal accounting records which will substantiate the propriety of eventual charges.

(2) There are two types of cost allocation plans:

(a) Statewide or central service cost allocation plan identifies and distributes the cost of services provided by support organizations to those departments or units participating in Federal programs.

(b) Indirect cost proposals distribute the administrative or joint costs incurred by the State agency and the cost of service allocable to it under the Statewide or central service cost allocation plan in a ratio to all work performed by the State agency. The

process involves applying a percentage relationship of indirect cost to direct cost.

(3) *Requirements.* The cost allocation plan of the State agency shall cover all allocated costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the State agency, to the extent feasible, should be presented in a single document.

(4) *Instructions for preparation of cost allocation plans.* The Department of Health and Human Services, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State agencies in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual State agencies.

(5) *Submitting plans for approval.*

(a) Responsibility for approving cost allocation plans for individual State agencies has been assigned by the Office of Management and Budget to the cognizant Federal agency.

(b) State cost allocation plans must be submitted to the cognizant Federal agency within six months after the last day of the State's fiscal year. Upon request by the State agency, an extension of time for submittal of the cost allocation plan may be granted by the cognizant Federal agency. It is essential that cost allocation plans be submitted in a timely manner. Failure to submit the plans when required will cause the State agency to become delinquent. In the event a State becomes delinquent, FNS will not provide for the recovery of central service and indirect costs, and such costs already made and claimed against Food Stamp Program funds will be subject to disallowance.

(6) *Negotiation and approval of cost allocation plans for States.* The cognizant Federal agency, in collaboration with Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans.

(7) *Negotiation and approval of cost allocation plans for local governments.* Cost allocation plans will be retained at the local government level for audit by the cognizant Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(8) A current list of cognizant Federal agencies is maintained by the Office of Management and Budget.

(9) *Resolution of problems.* The Office of Management and Budget will lend assistance in resolving problems encountered by Federal agencies on cost allocation plans.

(10) Approval by FNS. FNS reserves the right to disapprove costs not meeting the general criteria outlined in section C of these principles. FNS shall promptly notify the State agency in writing of the disapproval, the reason for the disapproval and the effective date. Costs incurred by State agencies after disapproval may not be charged to FNS unless if FNS subsequently approves the cost.

Standards for Selected Items of Cost

A. *Allowable cost.* Standards for allowability of costs are established by Federal Management Circular 74–4. These standards will apply regardless of whether a particular item of cost is treated as direct or indirect. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable. Rather, determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles as stated in Attachment A to Federal Management Circular 74–4.

(1) *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of the Food Stamp Program is allowable. This includes costs incurred by central service agencies of the State government for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the Program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the agreement; and

(d) Other purposes specifically provided for by FNS regulations or approved by FNS in the administration of the Food Stamp Program.

(3) *Advisory councils.* Costs incurred by State advisory councils or committees established to carry out Food Stamp Program goals are allowable. The cost of like organizations is allowable when used to improve the efficiency and effectiveness of the Program.

(4) *Audit service.* The cost of audits necessary for the administration and management of functions related to the Program is allowable.

(5) *Bonding.* Costs of premiums on bonds covering employees who handle Food Stamp Program funds or food coupons are allowable. The amount of allowable coverage shall be limited to the anticipated maximum amount of food stamp funds or food coupons handled at one time by that employee.

(6) *Budgeting.* Costs incurred for the development, preparation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the State agency's budget process, the cost of services identifiable to the Food Stamp Program are allowable.

(7) *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(8) *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for the Food Stamp Program is allowable.

(9) *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

(10) *Compensation for personal services.*

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance in the administration of the program including but not necessarily limited to wages, salaries, and supplementary compensation and benefits as defined in section A.(13) of these principles. The costs of such compensation are allowable to the extent that total compensation for individual employees: is reasonable for the services rendered; follows an appointment made in accordance with State or local government laws and rules and which meets Federal Merit System or other requirements, where applicable; and is determined and supported as provided in section A of these principles. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Food Stamp Program activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and distribution of time.* Amounts charged to the program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the State or local agency. Payrolls must be supported by time and attendence or equivalent records for individual employees. Distribution of salaries and wages of employees chargeable to more than one program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by FNS.

(11) *Depreciation and use allowance.*

(a) State agencies may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowances will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost of any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of acquisition of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by FNS.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding

six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(12) *Disbursing service*. The cost of disbursing program funds by the State Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

(13) *Employee fringe benefits*. Costs identified are allowable to the extent that total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are provided pursuant to an approved leave system, and the cost thereof is equitably allocated to all related activities, including federally assisted programs.

(b) Employee benefits in the form of employers' contributions or expense for social security, employees' life and health insurance plans, unemployment insurance coverage, workers' compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to programs and to other activities.

(14) *Employee morale, health And welfare costs*. The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

(15) *Exhibits*. Costs of exhibits relating specifically to the Food Stamp Program are allowable.

(16) *Legal expenses*. The cost of legal expenses required in the administration of the program is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government is unallowable.

(17) *Maintenance and repair*. Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

(18) *Materials and supplies*. The cost of materials and supplies necessary to carry out the program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the State agency. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

(19) *Memberships, subscriptions and professional activities*.

(a) The *cost of membership* in civic, business, technical, and professional organizations is allowable, provided:

(i) The benefit from the membership is related to the program,

(ii) The expenditure is for agency membership,

(iii) The cost of the membership is reasonably related to the value of the services or benefits received, and

(iv) The expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference material*. The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(c) *Meetings and conferences*. Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the program and they are consistent with regular practices followed for other activities of the State agency.

(20) *Motor pools*. The costs of a service organization which provides automobiles to user State agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

(21) *Payroll preparation*. The cost of preparing payrolls and maintaining necessary wage records is allowable.

(22) *Personnel administration*. Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for the program are allowable.

(23) *Printing and reproduction*. Cost for printing and reproduction services necessary for program administration including but not limited to forms, reports, manuals, and information literature, is allowable. Publication costs of reports or other media relating

to program accomplishments or results are allowable.

(24) *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for the program is allowable.

(25) *Prosecution activities.* The costs of investigations and prosecutions of intentional Food Stamp Program violations are allowable. Costs of investigation, prosecution, or claims collection which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FNS.

(26) *Taxes.* In general, taxes or payments in lieu of taxes which the State agency is legally required to pay are allowable.

(27) *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits the program is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by FNS.

(28) *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(29) *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two. The charges must be consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available. Notwithstanding the provisions of paragraphs C (7) and (10), travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

B. *Costs allowable with approval of FNS.*

(1) *Automated Data Processing.* The costs of acquiring data processing equipment and services used in the administration of the Food Stamp Program are allowable. The costs of ADP equipment and services acquisitions which exceed the prior approval cost thresholds specified in §277.18(c) are allowable upon the prior written approval of FNS. Requests for prior approval of such costs shall be in accordance with the provisions of §277.18.

(2) *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the Program is allowable subject to the following conditions.

(a) The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.

(b) The cost of space may not be charged to FNS for periods of nonoccupancy, without authorization of FNS.

(i) *Rental cost.* The rental cost of space in a privately-owned building is allowable.

(ii) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(iii) *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the program or those that materially increase the value or useful life of the facilities (section B(3) of these principles) are allowable when specifically approved by FNS.

(iv) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in paragraph A(11) of these principles.

(v) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by FNS.

(3) *Capital expenditures.* The cost, net of any credits, of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets, and/or of nonexpendable personal property, having a useful life of more than one year and a net acquisition cost of more than $5,000 per unit after allocation to FNS as projected for one year after purchase, is allowable when such procurement is specifically approved by FNS. No such approval shall be granted unless the State agency shall demonstrate to FNS that such a cost is:

(a) Necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein; and

(b) That procurement of such item or items has been or will be made in accordance with the standards set out in §277.14. In no case shall such a cost become a program charge against FNS prior to approval in writing by FNS of the procurement and the cost. When assets acquired with Food Stamp funds are (i) sold, (ii) no longer available for use in a federally sponsored program, or (iii) used for

purposes not authorized by FNS, FNS's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(4) *Insurance.*

(a) Cost of insurance to secure the State agency against financial losses involved in the acceptance, storage, and issuance of food coupons and ATP cards is allowable with FNS approval.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that FNS approves such cost.

(5) *Management studies.* The cost of management studies to improve the effectiveness and efficiency of program management for the Food Stamp Program is allowable. However, FNS must approve cost in excess of $2,500 for studies performed by outside consultants or agencies other than the State agency.

(6) *Preagreement costs.* Costs incurred prior to the effective date of approval of the amended indirect cost proposal or the revised Statewide cost allocation plan, whether or not they would have been allowable thereunder if incurred after such date, are allowable only when subsequently provided for in the plan or approved indirect cost proposal.

(7) *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the State agency is allowable. Prior authorization must be obtained from FNS for cost exceeding a total of $2,500.

(8) *Proposal costs.* Costs of preparing indirect cost proposals or amendments for allocating, distributing, and implementing provisions for payment of portions of the costs of administering the Food Stamp Program by the State agency are allowable.

(9) *Cost incurred by agencies other than the State.* The cost of services provided by other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which may be centralized and includes such functions as procurement, payroll, personnel services, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service and the like. Supervision costs will not include supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in the operation of the program. In lieu of determining actual indirect cost related to a particular service performed by another agency, either of the following alternative methods may be used during the fiscal year involved and is specifically provided for in the indirect cost proposal:

(a) Standard indirect rate equal to ten percent of direct labor cost in providing the service (excluding overtime, shift or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable cost.

(b) A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated.

C. *Unallowable costs.* The following costs shall not be allowable:

(1) *Costs of determining food stamp eligibility incidental to the determination of TANF eligibility are not chargeable to FNS.*

(2) *Bad debts.* Any losses arising from uncollectible accounts or other claims, and related costs, are unallowable.

(3) *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) *Contributions and donations.* Unallowable.

(5) *Entertainment.* Costs whose purpose is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) *Fines and penalties.* Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) *Indemnification.* The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) *Interest and other financial costs.* Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) *Losses.* Losses which could have been covered by permissible insurance are unallowable.

(12) *Underrecovery of cost under agreements.* Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

[Amdt. 188, 45 FR 85702, Dec. 30, 1980, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982; Amdt. 298, 52 FR 36400, Sept. 29, 1987; Amdt. 316, 54 FR 24531, June 7, 1989; Amdt. 319, 55 FR 4361, Feb. 7, 1990; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 385, 65 FR 33441, May 24, 2000]

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

Sec.

278.1 Approval of retail food stores and wholesale food concerns.
278.2 Participation of retail food stores.
278.3 Participation of wholesale food concerns.
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278.8 [Reserved]
278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.
278.10 [Reserved]

AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 278 are contained in § 271.8.

§ 278.1 Approval of retail food stores and wholesale food concerns.

(a) *Application.* Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an applicant qualifies, or continues to qualify, for authorization under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. Required visits shall be conducted by an authorized employee of the Department, a designee of the Secretary, or an official of the State or local government designated by the Secretary. FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation.

(b) *Determination of authorization.* An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program. In determining whether a firm qualifies for authorization, FNS shall consider all of the following:

(1) *The nature and extent of the food business conducted by the applicant*—(i) *Retail food store.* (A) An establishment

or house-to-house trade route shall normally be considered to have food business of a nature and extent that will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods as defined in §271.2 of this chapter, including perishable foods in at least two of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment or route in staple foods (Criterion B).

(B) A retail food store must meet eligibility determination factors which may be based on, but not limited to, visual inspection, sales records, purchase records, counting of stockkeeping units, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry. In determining eligibility, such information may be requested for verification purposes, and failure to provide such documentation may result in denial or withdrawal from the program.

(ii) *Application of Criterion A.* In order to qualify under this criterion, firms shall:

(A) Offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than three different varieties of food items in each of the four staple food categories. Documentation to determine if a firm stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the requirement has been met. Such documentation can be achieved through store visits and/or verifying information when requested. Failure to provide verifying information when requested or to cooperate with store visits shall result in the denial or withdrawal of authorization.

(B) Offer for sale perishable staple food items in at least two staple food categories. Perishable foods are items which are either frozen staple food items or fresh, unrefrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within 2–3 weeks; and

(C) Offer a variety of staple foods which means different types of foods, such as apples, cabbage, tomatoes, and squash in the fruit or vegetable staple food category, or milk, cheese, butter and yogurt in the dairy category. Variety of foods is not to be interpreted as different brands, different nutrient values, different varieties of packaging, or different package sizes. Similar processed food items with varying ingredients such as, but not limited to, sausages, breakfast cereals, milk, sliced breads, and cheeses, and similar unprocessed food items, such as, but not limited to, different varieties of apples, cabbage, tomatoes, or squash shall not each be considered as more than one staple food variety for the purpose of determining variety. Multiple ingredient food items intended for home preparation and consumption, such as, but not limited to, cold pizza, macaroni and cheese, soup, or frozen dinners, shall only be counted as one staple food variety each and will normally be included in the staple food category of the main ingredient as determined by the FNS.

(iii) *Application of Criterion B.* In order to qualify under this criterion, firms must have more than 50 percent of their total gross retail sales in staple food sales. Total gross retail sales must include all retail sales of a firm, including food and non-food merchandise, as well as services, such as rental fees, professional fees, and entertainment/sports/games income. However, a fee directly connected to the processing of staple foods, such as raw meat, poultry, or fish by the service provider, may be calculated as staple food sales under Criterion B.

(iv) *Ineligible firms.* Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of the Food Stamp Program shall not be eligible for program participation. New applicant firms that are found to be ineligible will be denied authorization to participate in the program, and authorized retail food stores found to be ineligible will be withdrawn from program participation. Ineligible firms under this paragraph include, but are not limited to, stores

selling only accessory foods, including spices, candy, soft drinks, tea, or coffee; ice cream vendors selling solely ice cream; and specialty doughnut shops or bakeries not selling bread. In addition, firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/or cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores under Criterion A or B. This includes firms that primarily sell prepared foods that are consumed on the premises or sold for carryout. Such firms may qualify, however, under the special restaurant programs that serve the elderly, disabled, and homeless populations, as set forth in paragraph (d) of this section.

(v) *Wholesale food concerns.* Wholesale food concerns, the primary business of which is the sale of eligible food at wholesale, and which meet the staple food requirements in paragraph (b) of this section, shall normally be considered to have adequate food business for the purposes of the program, provided such concerns meet the criteria specified in paragraph (c) of this section.

(vi) *Co-located wholesale food concerns.* No co-located wholesale/retail food concern with 50 percent or less of its total sales in retail food sales may be authorized to redeem food stamps unless it meets the criteria applicable to all retail firms and:

(A) It is a legitimate retail food outlet. Indicators which may establish to FNS that a firm is a legitimate retail food outlet include, but are not limited to, the following:

(*1*) The firm's marketing structure; as may be determined by factors such as, but not limited to:

(*i*) A retail business license;

(*ii*) The existence of sales tax records documenting retail food sales; and/or separate bookkeeping records; and

(*2*) The way the firm holds itself out to the public as evidenced by factors such as, but not limited to:

(*i*) The layout of the retail sales space;

(*ii*) The use of retail advertisements;

(*iii*) The posting of retail prices;

(*iv*) Offering specials to attract retail customers;

(*v*) Hours of operation for retail business;

(*vi*) Parking area for retail customers; and

(B) It has total annual retail food sales of at least $250,000; or

(C) It is a legitimate retail outlet but fails to meet the requirements in paragraph (b)(1)(iv)(B) of this section, and not authorizing such a firm would cause hardship to food stamp households. Hardship would occur in any one of the following circumstances:

(*1*) Program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food;

(*2*) Special ethnic foods would not otherwise be available to recipients; or

(*3*) Recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm if no other authorized firm in the area offers the same types of food items at comparable prices.

(2) *The volume of coupon business which FNS may reasonably expect the firm to do.* The FNS officer in charge may consider such factors as the location of a store and previous food sales volumes in evaluating the ability of an applicant firm to attract food stamp business.

(3) *The business integrity and reputation of the applicant.* FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

(i) Conviction of or civil judgment against the owners, officers or managers of the firm for:

(A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco,

firearms, controlled substances, and/or gaming licenses;

(ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm;

(iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;

(iv) Previous Food Stamp Program violations administratively and/or judicially established as having been committed by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied;

(v) Evidence of prior Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm at one or more units of a multi-unit firm, or evidence of prior Food Stamp Program violations committed by management at other units of multi-unit firms which would indicate a lack of business integrity on the part of ownership and for which sanctions had not been previously imposed and satisfied; or

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.

(4) *The submission of collateral bonds or irrevocable letters of credit for firms with previous sanctions.* (i) If the applicant firm has been sanctioned for violations of this part, by withdrawal, or disqualification for a period of more than six months, or by a civil money penalty in lieu of a disqualification period of more than six months, or if the applicant firm has been previously sanctioned for violations and incurs a subsequent sanction, regardless of the disqualification period, FNS shall, as a condition of future authorization, require the applicant to present a collateral bond or irrevocable letter of credit that meets the following conditions:

(A) The collateral bond must be issued by a bonding agent/company recognized under the law of the State in which the applicant is conducting business and which is represented by a negotiable certificate only. The irrevocable letter of credit must be issued by a commercial bank;

(B) The collateral bond or irrevocable letter of credit must be made payable to the Food and Nutrition Service, U.S. Department of Agriculture;

(C) The collateral bond cannot be canceled by the bonding agent/company for non-payment of the premium by the applicant. The irrevocable letter of credit cannot be canceled by the commercial bank for non-payment by the applicant;

(D) The collateral bond or irrevocable letter of credit must have a face value of $1,000 or an amount equal to ten percent of the average monthly food stamp benefit redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the collateral bond or irrevocable letter of credit, whichever amount is greater;

(E) The applicant is required to submit a collateral bond or irrevocable letter of credit that is valid for a period of five years when re-entering the program; and

(F) The collateral bond or irrevocable letter of credit shall remain in the custody of FNS unless released to the applicant as a result of the withdrawal of the applicant's authorization, without a fiscal claim established against the applicant by FNS.

(ii) Furnishing a collateral bond or irrevocable letter of credit shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FNS prior to the time the bond or letter of credit was required by FNS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FNS as required, any subsequent fiscal claim asserted by FNS. In such cases a collateral bond or irrevocable letter of credit shall be furnished to FNS with the payment, or a schedule of intended payments, of the

civil money penalty. A buyer or transferee shall not, as result of the transfer or purchase of a disqualified firm, be required to furnish a bond or letter of credit prior to authorization.

(5) *Taxpayer identification numbers.* At the time of an initial request for authorization as well as reauthorization, an applicant firm must provide its employer identification number and social security numbers as described below:

(i) *Employer Identification Number.* The firm must provide its employer identification number (EIN) if one has been assigned to the firm by the Internal Revenue Service. The authority to request EINs and the guidelines for requesting EINs are set forth in section 6109(f) of the Internal Revenue Code of 1986 and Treas. Reg. § 301.6109–2 (26 CFR 301.6109–2).

(ii) *Social Security Number.* In addition to the EIN, the firm must provide the social security numbers (SSNs) of the following individuals:

(A) The SSN of an owner of a sole proprietorship.

(B) The SSNs of general partners of firms which are partnerships.

(C) The SSNs of up to five of the largest shareholders (owners) of privately owned corporations. (For purposes of this section, a privately owned corporation is one which has shares or stock that are not traded on a stock exchange or available for purchase by the general public.)

(6) *Other factors.* Any other factors which the FNS officer in charge considers pertinent to the application under consideration.

(c) *Wholesalers.* A wholesale food concern may be authorized to accept coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet:

(1) For one or more specified authorized drug addict or alcoholic treatment programs,

(2) For one or more specified authorized group living arrangements,

(3) For one or more specified authorized shelters for battered women and children,

(4) For one or more specified authorized nonprofit cooperative food-purchasing ventures,

(5) For one or more specified authorized public or private nonprofit homeless meal providers, or

(6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons.

No firm may be authorized to accept and redeem coupons concurrently as both a retail food store and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

(d) *Meal services.* A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a senior citizens' center or apartment building occupied primarily by elderly persons and SSI recipients, and their spouses; or

(3) It is a restaurant operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to homeless persons, elderly persons and SSI recipients (and in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. Such a facility must have more than 50 percent of its total sales in food. The contracts of restaurants must specify the approximate prices which will be charged.

(e) *Treatment programs.* Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem benefits shall in addition to meeting the requirements of paragraphs (a), (b) and (d)(1) of this section, be under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under part B of Title XIX (in accordance with the definition in *Drug*

addiction or alcoholic treatment and rehabilitation program in § 271.2).

(f) *Group living arrangements.* FNS shall authorize as retail food stores those group living arrangements wishing to redeem benefits. The group living arrangement must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(g) *Shelters for battered women and children.* FNS shall authorize as retail food stores those shelters for battered women and children wishing to redeem benefits. The shelter must be public or private nonprofit, as defined in paragraph (d)(1) of this section, and meet the requirements of paragraphs (a) and (b) of this section. Shelters which also serve other groups of individuals must have a portion of the facility set aside on a long-term basis to shelter battered women and children. Also required is that the shelter be a residence which serves meals or provides food to its residents.

(h) *House-to-house trade routes.* FNS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FNS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FNS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route does and the availability of alternate sources of comparable food. An FNS official shall inspect any applicant trade route's vehicle to ensure that the trade route is a retail food store before authorizing it to accept coupons. An FNS official may require, as a condition of continuing authorization, that the trade route vehicle be reinspected semiannually to ensure that it continues to be a retail food store.

(i) *Private homeless meal providers.* FNS may authorize as retail food stores those restaurants which contract with the appropriate State agency to serve meals to homeless persons at ''concessional'' (low or reduced) prices. Restaurants shall be responsible for obtaining contracts with the appropriate State agency as defined in § 272.9 and for providing a copy of the contract to FNS at the time it applies for authorization to accept food stamp benefits. Contracts must specify the approximate prices which will be charged. Examples of reduced prices include, but are not limited to, a percentage reduction, a set dollar amount reduction, a daily special meal, or an offer of a free food item or beverage (excluding alcoholic beverages).

(j) *Authorization.* Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem food stamp benefits. The authorization card shall be retained by the firm until such time as the authorization period has ended, authorization in the program is superseded, or the card is surrendered or revoked as provided in this part. All firms will be authorized in the program for a period of 5 years. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

(k) *Denying authorization.* FNS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraph (b), (c), (d), (e), (f), (g), (h) or (i) of this section; or

(2) The firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section; or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(vi)

of this section. Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial;

(3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:

(i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in § 278.1(b)(3)(i) shall be denied authorization permanently;

(ii) Firms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs; or, if the firm is not removed from the program, but FNS determines a pattern (3 or more instances) exists evidencing a lack of business integrity on the part of the owners, officers or managers of the firm, such firm shall be denied for a one year period effective from the date of denial;

(iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food Stamp Act of 1977, as amended, and program regulations shall be denied for a period of three years from the effective date of denial;

(iv) Firms for which evidence exists of prior Food Stamp Program violations by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(v) Firms for which evidence exists of prior Food Stamp Program violations at other units of multi-unit firms as specified in § 278.1(b)(3)(v) for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in § 278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial;

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3);

(5) The firm's participation in the program will not further the purposes of the program;

(6) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(7) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7, any fines assessed under §§ 278.6(l) or 278.6(m), or a transfer of ownership civil money penalty assessed under § 278.6(f). The FNS officer in charge shall issue a notice to the firm (using any delivery method that provides evidence of delivery) to inform the firm of any authorization denial and advise the firm that it may request review of that determination.

(l) *Withdrawing authorization.* (1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

(i) The firm's continued participation in the program will not further the purposes of the program;

(ii) The firm fails to meet the specifications of paragraph (b), (c), (d), (e), (f), (g), (h), or (i) of this section;

(iii) The firm fails to meet the requirements for eligibility under Criterion A or B, as specified in paragraph (b)(1)(i) of this section; or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(vi) of this section, for the time period specified in paragraph (k)(2) of this section;

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section.

Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings;

(v) The firm has failed to pay in full any fiscal claim assessed against the firm under §278.7 or any fines assessed under §§278.6(l) or 278.6(m) or a transfer of ownership civil money penalty assessed under §278.6(f); or

(vi) The firm has failed to pay fines assessed under §278.6(l) or §278.6(m); or

(vii) The firm is required under State and/or local law to charge tax on eligible food purchased with coupons or to sequence or allocate purchases of eligible foods made with coupons and cash in a manner inconsistent with 272.1 of these regulations.

(2) The FNS officer in charge shall issue a notice to the firm by using any delivery method as long as the method provides evidence of delivery to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in part 279.

(m) *Refusal to accept correspondence or to respond to inquiries.* FNS may withdraw or deny the authorization of any firm which:

(1) Refuses to accept correspondence from FNS;

(2) Fails to respond to inquiries from FNS within a reasonable time; or

(3) Cannot be located by FNS with reasonable effort.

(n) *Periodic reauthorization.* At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

(o) *Applications containing false information.* The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in §278.6, and may subject the firm and persons responsible to civil or criminal action.

(p) *Administrative review.* Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under part 279.

(q) *Use and disclosure of information provided by firms.* With the exception of EINs and SSNs, any information collected from retail food stores and wholesale food concerns, such as ownership information and sales and redemption data, may be disclosed for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations, and can be disclosed to and used by State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Such information may also be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing other Federal or State law, and the regulations issued under such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of FNS to accomplish an FNS function. Such purposes include the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to employee identification numbers (EINs) are contained in paragraph (q)(2) of this section. Safeguards with respect to Social Security numbers (SSNs) are contained in paragraph (q)(3) of this section.

(1) *Criteria for requesting information.* FNS shall determine what information can be disclosed and which government agencies have access to that information based on the following criteria:

(i) Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal and State

laws, or regulations issued under those laws, have access to certain information maintained by FNS. Such agencies or instrumentalities must have among their responsibilities the enforcement of law or the investigation of suspected violations of law. However, only certain Federal entities have access to information involving SSNs and EINs in accordance with paragraph (q)(1)(ii) of this section;

(ii) Except for SSNs and EINs, information provided to FNS by applicants and authorized firms participating in the FSP may be disclosed and used by qualifying Federal and State entities in accordance with paragraph (q)(1)(i) of this section. The disclosure of SSNs and EINs is limited only to qualifying Federal agencies or instrumentalities which otherwise have access to SSNs and EINs based on law and routine use. Release of information under this paragraph shall be limited to information relevant to the administration or enforcement of the specified laws and regulations, as determined by FNS;

(iii) Requests for information must be submitted in writing, including electronic communication, and must clearly indicate the specific provision of law or regulations which would be administered or enforced by access to requested information, and the relevance of the information to those purposes. If a formal agreement exists between FNS and another agency or instrumentality, individual written requests may be unnecessary. FNS may request additional information if needed to clarify a request;

(iv) Disclosure by FNS is limited to: Information about applicant stores and concerns with applications on file; information about authorized stores participating in the FSP; and information about unauthorized entities or individuals illegally accepting or redeeming food stamps;

(v) Requests for information disclosure by FNS may involve a specific store or concern, or some or all stores and concerns covered by paragraph (q)(1)(iv) of this section. In addition, FNS may sign agreements allowing certain government entities direct access to appropriate FNS data, with access to EINs and SSNs limited only to other Federal agencies and instrumentalities that otherwise have access to such numbers.

(2) *Employer identification numbers.* (i) The Department may have access to the EINs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of the names and EINs of the stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department also may share EINs with other Federal agencies and instrumentalities that otherwise have access to EINs if the Department determines that such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used by the Department or such other agency or instrumentality for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. § 301.6109–2 (b) and (c) (26 CFR 301.6109–2 (b) and (c)).

(ii) The only persons permitted access to EINs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access and whose duties or responsibilities require access to the EINs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. § 301.6109–2(d)(1) (26 CFR 301.6109–2(d)(1)).

(iii) The Department or any agency or instrumentality of the United States shall provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the EINs. The Department may also provide for any additional safeguards to protect the confidentiality of EINs so long as these safeguards are consistent with any safeguards determined by the Secretary of

the Treasury to be necessary or appropriate. See Treas. Reg. § 301.6109–2(d)(2) (26 CFR 301.6109–2(d)(2)).

(iv) EINs maintained by the Department or maintained by any agency or instrumentality of the United States pursuant to § 278.1(b)(5) are confidential. Except as provided in paragraph (q)(2)(ii) of this section above, no officer or employee of the United States who has or had access to any such EIN may disclose that number in any manner. For purposes of paragraph (q)(2)(iv) of this section the term *officer or employee* includes a former officer or employee. See Treas. Reg. § 301.6109–2(e) (26 CFR 301.6109(e)).

(v) Sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 apply with respect to the unauthorized, willful disclosure to any person of EINs obtained by the Department pursuant to § 278.1(b)(5) in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosure of returns and return information described in those sections. Section 7213(a)(4) of the Internal Revenue Code of 1986 applies with respect to the willful offer of any item of material value in exchange for any EIN obtained by the Department pursuant to § 278.1(b)(5) in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section. See Treas. Reg. § 301.6109–2(f) (26 CFR 301.6109–2(f)).

(3) *Social Security numbers.* (i) The Department may have access to SSNs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of names and SSNs of stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions and convictions in administering sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018, 2021). The Department also may share SSNs with other Federal agencies and instrumentalities if the Department determines that such sharing would assist in verifying and matching such information against information maintained by the Department or such other agency or instrumentality. Any such information shared pursuant to this paragraph shall be used for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws.

(ii) The only persons permitted access to SSNs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access, and whose duties or responsibilities require access to the SSNs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. Such access shall also include companies or individuals under contract for the operation by, or on behalf of FNS to accomplish an FNS function.

(iii) The Department shall provide for all additional safeguards that the Commissioner of the Social Security Administration determines to be necessary or appropriate to protect the confidentiality of the SSNs. The Department may also provide for any additional safeguards to protect the confidentiality of SSNs so long as these safeguards are consistent with any safeguards determined by the Commissioner of the Social Security Administration to be necessary or appropriate.

(iv) The SSNs and related records that are obtained or maintained by authorized persons are confidential, and no officer or employee shall disclose any such SSN or related record except as authorized. The term ''related record'' means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a request for a SSN is maintained. For purposes of paragraph (r)(3)(iv) of this section the term ''officer or employee'' includes a former officer or employee.

(v) The sanctions under sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 will apply with respect to the unauthorized, willful disclosure to any person of SSNs and related records obtained or maintained in

the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections. The sanction under section 7213(a)(4) of the Internal Revenue Code of 1986 will apply with respect to the willful offer of any item of material value in exchange for any SSN or related record in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(4) *FNS initiated matches.* Under the restrictions noted in paragraph (r) of this section, FNS will periodically initiate cross matches of retailer data with other Federal and State agencies' files for the purpose of verifying information provided by applicant and participating firms, and for the purposes of administering and enforcing other Federal or State laws. Such matches could involve all firms participating after implementation for the purpose of verifying information such as, but not limited to, SSNs and retail sales data.

(r) *Public and Private Nonprofit Homeless Meal Providers.* FNS shall authorize as retail food stores, those public and private nonprofit homeless meal providers which apply and qualify for authorization to accept food stamps from homless food stamp recipients. Such meal providers must be public or private nonprofit organizations as defined by the Internal Revenue Service (I.R.C. 501(c)(3)), must serve meals that include food purchased by the provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency, pursuant to § 272.9. Public and private nonprofit homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FNS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FNS authorization shall be withdrawn). Public and private nonprofit homeless meal providers serving meals which consist wholly of donated foods shall not be eligible for authorization. In an area in which FNS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a public and private nonprofit homeless meal provider would damage the Food Stamp Program's integrity, FNS shall limit the participation of that public and private nonprofit homeless meal provider, unless FNS determines that the establishment or shelter is the only one of its kind serving the area.

(s) Each authorized retail food store shall post in a suitable and conspicuous location in the store a sign designed and provided by FNS which provides information on how persons may report abuses they have observed in the operation of the program. Refusal or repeated failure to display such a sign by an authorized retail food store may result in the withdrawal of the firm's approval to participate in the program.

(t) *Periodic notification.* The FNS will issue periodic notification to participating retail stores and wholesale food concerns to clarify program eligibility criteria, including the definitions of ''Retail food store'', ''Staple foods'', ''Eligible foods'', and ''Perishable foods''. At a minimum, such information will be provided to stores at the time of authorization, reauthorization and upon request.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 278.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 61 FR 53600, Oct. 15, 1996, in § 278.1, paragraph (i) was redesignated as paragraph (j) and a new paragraph (i) was added. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 278.2 Participation of retail food stores.

(a) *Use of coupons.* Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is

returned as change in a transaction in which coupons were accepted in payment for eligible food under pargraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores.

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request *voluntary* use of food stamps from homeless food stamp recipients and may not request such household using food stamps to pay more than the average cost of the food *purchased* by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, ''average cost'' is determined by averaging food costs over a period of up to one calendar month. Voluntary payments by food stamp recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, food stamp recipients must be provided the same option of eating free or making a donation in money or food stamps. No retail food store may single out coupon users for special treatment in any way.

(c) *Accepting coupons.* No authorized retail food store may accept coupons marked ''paid,'' ''canceled,'' or ''specimen.'' Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. However, in the case of public or private nonprofit homeless meal providers, retail food stores may accept detached coupons which have been accepted by the homeless meal provider. It is the right of the household member or the authorized representative to detach the coupons from the book.

(d) *Making change.* An authorized retail food store shall use, for the purpose of making change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1-dollar is required, the eligible household shall receive the change in cash. However, in the case of public or private nonprofit homeless meal providers, neither cash change nor credit slips shall be provided under any circumstances when food stamps are used to purchase meals. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retail food store may not engage in a series of coupon transactions the purpose of which is to provide the same food stamp customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(e) *Accepting coupons before delivery.* Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 14 days from the day the cooperative receives the member's coupons.

(f) *Paying credit accounts.* Food stamp benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.

A firm that commits such violations shall be disqualified from participation in the Food Stamp Program for a period of one year.

(g)(1) *Redeeming coupons.* Authorized retail food stores may exchange coupons accepted in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Public or private nonprofit homeless meal providers may purchase food in authorized retail food stores and through authorized wholesale food concerns. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households shall not present coupons directly to an insured financial institution for redemption.

(2) Notwithstanding paragraph (g)(1) of this section, authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households may be authorized to redeem EBT benefits directly through an insured financial institution in areas where an Electronic Benefit Transfer (EBT) system has been implemented.

(h) *Identifying coupon users.* Coupons may not knowingly be accepted from persons who have no right to possession of coupons. If a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the food retailer should request the person to show the ID card of the household to establish the right of that person to use the coupons. Where photo ID cards are in use, the person presenting the ID card need not be pictured on the card. Public or private nonprofit homeless meal providers redeeming detached coupons through retail food stores shall present their retailer authorization card as proof of their eligibility to redeem coupons through retail food stores.

(i) *Checking meal delivery service recipients.* A nonprofit meal delivery service shall require the recipient of a delivered meal to show the marked ID card establishing the recipient's right to use coupons for that service the first time that the recipient offers coupons in payment for the service, and shall request the marked ID card at any time the nonprofit meal delivery service has cause to question the continued eligibility of the recipient to use coupons for delivered meals.

(j) *Checking hunting and fishing equipment users.* Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

(k) *Checking participants in restaurants.* A restaurant operating under a State contract shall require a household purchasing meals to show the marked ID card establishing the household's right to purchase meals with coupons unless the personnel of the restaurant know that the program participant tendering coupons is eligible to use coupons to purchase meals.

(l) *Checking public or private nonprofit homeless meal provider recipients.* Public or private nonprofit homeless meal providers shall establish a food stamp patron's right to purchase meals with coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended at Amdt. 191, 46 FR 50277, Oct. 9, 1981; Amdt. 205, 46 FR 60167, Dec. 8, 1981; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 286, 52 FR 7557, Mar. 11, 1987; 53 FR 31649, Aug. 19, 1988; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 356, 59 FR 29714, June 9, 1994; Amdt. 343, 61 FR 53601, Oct. 15, 1996; Amdt. 397, 70 72354, Dec. 5, 2005; 73 FR 79595, Dec. 30, 2008]

§ 278.3 Participation of wholesale food concerns.

(a) *Accepting coupons.* An authorized wholesale food concern may accept endorsed coupons from one or more specified authorized retail food stores, from one or more specified authorized nonprofit cooperative food-purchasing ventures, from one or more specified authorized group living arrangements, from one or more specified authorized drug addict or alcoholic treatment programs, from one or more specified authorized shelters for battered women and children, or, from one or more specified public or private nonprofit homeless meal providers if the coupons are accompanied by a properly filled-out and signed redemption certificate, and are not marked ''paid,'' ''canceled,'' or ''specimen.'' A wholesaler authorized to accept coupons from an authorized drug addict or alcoholic treatment program, or from an authorized group living arrangement, or from an authorized shelter for battered women and children, or from one or more public or private nonprofit homeless meal providers may accept coupons from that treatment program, or group living arrangement, or shelter for battered women and children, or from one or more public or private nonprofit homeless meal providers, only in exchange for food.

(b) *Accepting legally obtained coupons.* No authorized wholesale food concern may accept coupons if the wholesaler knows or has reasonable cause to believe that the coupons were not legally obtained for eligible food.

(c) *Redeeming coupons.* An authorized wholesale food concern may redeem coupons, properly accepted from retailers, through the banking system, upon presentation of the coupons with:

(1) The authorized retail food store's properly filled-out and signed redemption certificate for the coupons; and

(2) The authorized wholesale food concern's properly filled-out and signed redemption certificate.

(d) *Handling retailer redemption certificates.* No authorized wholesale food concern may alter, prepare, or complete an authorized retail food store's redemption certificate.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 173, 46 FR 62810, Dec. 29, 1981; Amdt. 286, 52 FR 7558, Mar. 11, 1987; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 343, 61 FR 53601, Oct. 15, 1996]

§ 278.4 Procedure for redeeming coupons.

(a) *Coupons accepted without authorization.* Coupons accepted by a retail food store or a wholesale food concern before the receipt by the firm of an authorization card from FNS may not be presented for redemption unless the FNS officer in charge has approved the redemption under § 278.7(b). Burned or mutilated coupons shall be presented for redemption to the FNS officer in charge as provided in § 278.7(c).

(b) *Endorsing coupons.* Each authorized retail food store or authorized wholesale food concern shall mark its authorization number or name on each coupon before it presents the coupons for redemption.

(c) *Using redemption certificates.* FNS will provide all authorized firms with redemption certificates. Wholesale food concerns and retail food stores, except for drug addict and alcoholic treatment and rehabilitation programs and public or private nonprofit homeless meal providers, shall use the redemption certificates to present coupons to insured financial institutions for credit or for cash. All retail food stores which wish to redeem coupons at wholesale food concerns shall use the redemption certificates for that purpose. An authorized retail firm using redemption certificates to redeem coupons shall fill out the redemption certificate to show the value of the coupons redeemed, the name of the insured financial institution or wholesaler, the date, and the signature and title of the official of the firm redeeming coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 286, 52 FR 7558, Mar. 11, 1987; Amdt. 344, 56 FR 54778, Oct. 23, 1991; Amdt. 343, 61 FR 53601, Oct. 15, 1996]

§ 278.5 Participation of insured financial institutions.

(a) *Accepting coupons.* (1) Financial institutions that are insured by the Federal Deposit Insurance Corporation

(FDIC) or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership may redeem coupons only from authorized retail food stores, meal services, and wholesale food concerns in accordance with the rules contained in this part and instructions of the Federal Reserve Banks. No financial institution may impose on or collect from a retail food store a fee or other charge for redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, except for coupon cancellation, for the presentation of coupons by the financial institution to the Federal Reserve banks. Coupons submitted to insured financial institutions for credit or cash must be properly endorsed in accordance with § 278.4 of this part and shall be accompanied by a properly completed and signed redemption certificate. All verified and encoded redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the accompanying Food Coupon Deposit Document (Form FNS–521). In accordance with Federal Reserve requirements, the coupon deposit value entered on the Food Coupon Deposit Document must be equal to the actual value of coupons being deposited and to the total value of verified amounts encoded on the corresponding redemption certificates.

(2) An insured financial institution shall verify the amount of the coupons being redeemed and record the amount in the designated space on the redemption certificate. In order to conform with Federal Reserve requirements, the verified amount shall be recorded in the appropriate field on the redemption certificate using Magnetic Ink Character Recognition (MICR) encoding. Redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the Food Coupon Deposit Document (Form FNS–521).

(3) Redeemed coupons must be indelibly cancelled on the face of the coupon by the first insured financial institution receiving them. If the cancellation on the coupon face does not show the depositing institution's name or its routing symbol transit number, this identifying information must appear on the straps affixed to each bundle of coupons of like denomination. Deposits not meeting these cancellation requirements may be returned to the depositing institution for reprocessing. Retail food stores may not be required to cancel the coupons by the insured financial institution nor may the insured financial institution charge the retail food stores a fee or other charge for cancellation of coupons. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed.

(4) Insured financial institutions which are members of the Federal Reserve System, insured nonmember clearing institutions, and insured nonmember institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member institution on the books of a Federal Reserve Bank may forward coupons directly to the Federal Reserve Bank. Other insured financial institutions may forward cancelled coupons through ordinary collection channels.

(b) *Role of Federal Reserve Banks.* Federal Reserve Banks, acting as fiscal agents of the United States, will receive canceled coupons for collection as cash items from armed forces installations, member insured financial institutions of the Federal Reserve System, nonmember clearing insured financial institutions, and nonmember insured financial institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member insured financial institution on the books of the Federal Reserve Bank, and will charge those items to the general account of the Treasurer of the United States.

(c) *FNS liability for losses.* FNS shall not be liable for the value of any coupons lost, stolen, or destroyed while in the custody of an insured financial institution or for the value of coupons lost, stolen, or destroyed while in transit from an insured financial institution to a Federal Reserve Bank.

(d) *FNS use of coupons to detect violations*. Regardless of any other provision in these regulations, coupons may be issued to, purchased by, or redeemed by persons authorized by FNS to use those coupons in examining and inspecting program operations, and for other purposes determined by FNS to be required for proper administration of the program. Coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (g) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of this subchapter or of any applicable statute, shall at the request of FNS and on issuance of a receipt for them be turned over to FNS by the insured financial institution receiving the coupons, or by any other person to whom the request is addressed, together with any certificate(s) of redemption accompanying the coupons. Any coupons so requested shall not be eligible for redemption through Federal Reserve Banks or other collection channels. However, FNS may redeem coupons from any insured financial institution or person by payment of the face amount of the coupons upon determination by FNS that this direct redemption of coupons is warranted. FNS shall determine the proper disposition of any coupons held by FNS on completion of the examination or inspection in which the coupons were used. Claims or demands for unredeemed coupons surrendered to FNS may be mailed to the local FNS field office for the project area involved.

(e) *Selling coupons to stores for internal checks*. FNS may sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of coupon transactions. The retail food store must submit a written request to FNS which shall include a certification that the store recognizes that its use of coupons will not affect FNS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods. The request shall also include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct checks of the store's employees using coupons. The request shall be directed to the Benefit Redemption Division, FSP, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, and shall be accompanied by a check or money order made payable to the Food and Nutrition Service to cover the face value cost of the coupons requested. Coupons bought by retail food stores for use in internal checks may be later redeemed for full value in accordance with § 278.4, and in redeeming those coupons, retail food stores are authorized to make the certification required for redemption.

(f) *Continued participation of households under investigation*. Upon the written request of Federal, State, or local government agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes concerning the enforcement of the Food Stamp Act or the regulations, the State agency may allow ineligible households to continue program participation. The State agency may allow the households to continue participation in the program until the earlier of (1) expiration of the period of 90 days after the request is received or any longer period which FNS, upon request of the State agency, may approve in a particular case, or (2) receipt of notification from the investigative agency that participation may be terminated or that the investigation has been completed. Regardless of any other provision of these regulations, FNS may not hold the State agency liable for the value of any coupons issued to households under this paragraph.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 267, 51 FR 6514, Feb. 25, 1986; Amdt. 272, 51 FR 12498, Apr. 11, 1986; Amdt. 288, 52 FR 11815, Apr. 13, 1987; Amdt. 272, 52 FR 18198, May 14, 1987; Amdt. 356, 59 FR 29714, June 9, 1994; Amdt. 331, 59 FR 60062, Nov. 22, 1994]

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act of 1977, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through onsite investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system, or the disqualification of a firm from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as specified in paragraph (e)(8) of this section. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification, or at any later time, shall file a new application under § 278.1 so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to an amount specified in § 3.91(b)(3)(i) of this title for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to an amount specified in § 3.91(b)(3)(ii) of this title for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

(b) *Charge letter*—(1) *General provisions.* Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section or a fine as specified under paragraph (l) or (m) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty or fine. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the officer in charge of the FNS field office which has responsibility for the project area in which the firm is located. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(2) *Charge letter for trafficking.* (i) The charge letter shall advise a firm being considered for permanent disqualification based on evidence of trafficking as defined in § 271.2 that the firm must notify FNS if the firm desires FNS to consider the sanction of a civil money penalty in lieu of permanent disqualification. The charge letter shall also advise the firm that the permanent disqualification shall be effective immediately upon the date of receipt of the notice of determination, regardless of whether a request for review is filed in accordance with part 279 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. Firms that request and are determined eligible for a civil money penalty in lieu of permanent disqualification for trafficking

may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action.

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in § 278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

(c) *Review of evidence.* The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. Firms that request and are determined eligible to a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the determination notice shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(d) *Basis for determination.* The FNS regional office making a disqualification or penalty determination shall consider:

(1) The nature and scope of the violations committed by personnel of the firm,

(2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and

(3) Any other evidence that shows the firm's intent to violate the regulations.

(e) *Penalties.* FNS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered sanctions for such purposes. The FNS regional office shall:

(1) Disqualify a firm permanently if:

(i) Personnel of the firm have trafficked as defined in § 271.2; or

(ii) Violations such as, but not limited to, the sale of ineligible items occurred and the firm had twice before been sanctioned.

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

(A) Eligibility requirements under § 278.1(b), (c), (d), (e), (f), (g) and (h);

(B) Staple food stock;

(C) Annual gross sales for firms seeking to qualify for authorization under Criterion B as specified in the Food Stamp Act of 1977, as amended;

(D) Annual staple food sales;

(E) Total annual gross retail food sales for firms seeking authorization as co-located wholesale/retail firms;

(F) Ownership of the firm;

(G) Employer Identification Numbers and Social Security Numbers;

(H) Food Stamp Program history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open

for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or

(I) Any other information of a substantive nature that could affect the eligibility of a firm.

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:

(i) It is the firm's practice to sell expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for food coupons; or

(ii) The firm's coupon redemptions for a specified period of time exceed its food sales for the same period of time; or

(iii) A wholesale food concern's redemptions of coupons for a specified period of time exceed the redemptions of all the specified authorized retail food stores, nonprofit cooperative food-purchasing ventures, group living arrangements, drug addict and alcoholic treatment programs, homeless meal providers, and shelters for battered women and children which the wholesale food concern was authorized to serve during that time; or

(iv) A wholesale food concern's stated redemptions of coupons for a particular retail food store, nonprofit cooperative food-purchasing venture, group living arrangement, drug addict and alcoholic treatment program, homeless meal providers, or shelters for battered women and children exceeded the actual amount of coupons which that firm or organization redeemed through the wholesaler; or

(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(i) It is the firm's practice to commit violations such as the sale of common nonfood items in amounts normally found in a shopping basket and the firm was previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) Any of the situations described in paragraph (e)(2) of this section occurred and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iii) The firm is an authorized communal dining facility, drug addiction or alcoholic treatment and rehabilitation program, group living arrangement, homeless meal provider, meal delivery service, or shelter for battered women and children and it is the firm's practice to sell meals in exchange for food coupons to persons not eligible to purchase meals with food coupons and the firm has been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iv) A wholesale food concern accepted coupons from an authorized firm which it was not authorized to serve and the wholesale food concern had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations; or

(v) The firm is an authorized retail food store and personnel of the firm have engaged in food coupon transactions with other authorized retail stores, not including treatment programs, group living arrangements, homeless meal providers, or shelters for battered women and children, and the firm had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(vi) Personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature related to the ability of FNS to monitor compliance of the firm with FSP requirements, such as, but not limited to, information related to:

(A) Annual eligible retail food sales;

(B) Store location and store address and mailing address;

(C) Financial institution information; or

(D) Store name, type of ownership, number of cash registers, and non-food inventory and services.

(4) Disqualify the firm for 1 year if:

(i) It is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) The firm has accepted food stamp benefits in payment for items sold to a household on credit.

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e) (2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.

(8) FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC Program:

(i) Based in whole or in part on any act which constitutes a violation of that program's regulation and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(A) A pattern of claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time;

(B) Exchanging WIC food instruments for cash, credit or consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances, as defined in section 802 of title 21 of the United States Code, for food instruments;

(C) A pattern of receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(D) A pattern of exchanging non-food items for a WIC food instrument;

(E) A pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than the current shelf price; or

(F) A pattern of charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(ii) FNS shall not disqualify a firm from the Food Stamp Program on the basis of a WIC disqualification unless:

(A) Prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from the Food Stamp Program based on the WIC violations committed by the firm;

(B) A signed and dated copy of such notice is provided to FNS by the WIC administering agency; and

(C) A determination is made in accordance with paragraph (a) of this section that such action will not cause a hardship for participating Food Stamp households.

(iii) Such a Food Stamp disqualification:

(A) Shall be for the same length of time as the WIC disqualification;

(B) May begin at a later date than the WIC disqualification; and

(C) Shall not be subject to administrative or judicial review under the Food Stamp Program.

(f) *Criteria for civil money penalties for hardship and transfer of ownership.* (1) FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store which meets the criteria for a civil money penalty if the store had previously been assigned a sanction. A civil money penalty for hardship to food stamp households may not be imposed in lieu of a permanent disqualification.

(2) In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

(3) At any time after a civil money penalty imposed under paragraph (f) (2) of this section has become final under the provisions of part 279, the Food and Consumer Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business.

(4) A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer. A buyer or transferee (other than a bona fide buyer or transferee) may not be authorized to accept or redeem coupons and may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

(g) *Amount of civil money penalties for hardship and transfer of ownership.* FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed an amount specified in § 3.91(b)(3)(i) of this title for each violation.

(h) *Notifying the firm of civil money penalties for hardship and transfer of ownership.* A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty, or to notify the regional office in writing of its intent to pay in installments as specified by the regional office. The firm must present to FNS a collateral bond as specified in § 278.1(b)(4), within the same 15-day period. The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified. FNS shall:

(1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;

(2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FNS regional office; or

(3) Disqualify the firm for the prescribed period if the firm does not present a collateral bond or irrevocable letter of credit within the required 15 days. Any payment on a civil money penalty which have been received by FNS shall be returned to the firm. If the firm presents the required bond or irrevocable letter of credit during the disqualification period, the civil money penalty may be reinstated for the duration of the disqualification period.

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented

an effective compliance policy and program to prevent violations of the Program. Firms assessed a CMP under this paragraph shall be subject to the applicable penalties included in §278.6(e) (2) through (6) for the sale of ineligible items. Only those firms for which a permanent disqualification for trafficking took effect on or after October 1, 1988, are eligible for a civil money penalty in lieu of permanent disqualification for trafficking, except that firms that have been disqualified but are awaiting a judicial review decision are eligible for a civil money penalty in lieu of a permanent disqualification. In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred *prior* to the occurrence of violations cited in the charge letter sent to the firm; and

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; or it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm. Upon the second occasion of trafficking involvement by any member of firm management uncovered during a subsequent investigation, a firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. Notwithstanding the above provision, if trafficking violations consisted of the sale of firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. §802, and such trafficking was conducted by the ownership or management of the firm, the firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. For purposes of this section, a person is considered to be part of firm management if that individual has substantial supervisory responsibilities with regard to directing the activities and work assignments of store employees. Such supervisory responsibilities shall include the authority to hire employees for the store or to terminate the employment of individuals working for the store.

(1) *Compliance policy standards.* As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current FSP regulations and current FSP policy on the proper acceptance and handling of food coupons. As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

(i) Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating FSP regulations;

(ii) Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of FSP violations or irregularities committed by firm personnel;

(iii) Documentation of the development and/or continued operation of procedures for internal review of firm employees' compliance with FSP regulations;

(iv) The nature and scope of the violations charged against the firm;

(v) Any record of previous firm violations under the same ownership; and

(vi) Any other information the firm may present to FNS for consideration.

(2) *Compliance training program standards.* As prescribed in Criterion 3 above, the firm shall have developed and implemented an effective training program for all managers and employees on the acceptance and handling of food coupons in accordance with this part 278. A firm which seeks a civil money penalty in lieu of a permanent disqualification shall document its training activity by submitting to FNS its

dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). FNS shall consider a training program effective if it meets or is otherwise equivalent to the following standards:

(i) Training for all managers and employees whose work brings them into contact with food stamps or who are assigned to a location where food stamps are accepted, handled or processed shall be conducted within one month of the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy shall be trained within one month of employment. All employees shall be trained periodically thereafter;

(ii) Training shall be designed to establish a level of competence that assures compliance with Program requirements as included in this part 278;

(iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program. Training materials shall clearly state that the following acts are prohibited and are in violation of the Food Stamp Act and regulations: the exchange of food coupons, ATP cards or other program access devices for cash; and, in exchange for coupons, the sale of firearms, ammunition, explosives or controlled substances, as the term is defined in section 802 of title 21, United States Code.

(j) *Amount of civil money penalty in lieu of permanent disqualification for trafficking*. A civil money penalty assessed in accordance with § 278.6(i) shall not exceed the amount specified in § 3.91(b)(3)(ii) of this title for each violation and shall not exceed the amount specified in § 3.91(b)(3)(ii) of this title for all violations occurring during a single investigation. FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions for the 12-month period ending with the month immediately preceding the month during which the firm was charged with violations;

(2) Multiply the average monthly redemption figure by 10 percent;

(3) For the first trafficking offense by a firm, multiply the product obtained in § 278.6(j)(2) by 60 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of $99 or less. If the face value of coupons, ATP cards or other benefit instruments involved in the largest single trafficking transaction was $100 or more, the amount of the product obtained in this paragraph shall be doubled;

(4) For a second trafficking offense by a firm, multiply the product obtained in § 278.6(j)(2) by 120 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of $99 or less and the same firm has once before been sanctioned for trafficking in food coupons, ATP cards, or other benefit instruments. If the face value of food coupons, ATP cards, or other benefit instruments involved in the largest single trafficking transaction was $100 or more, the amount of the product obtained in this paragraph shall be doubled; and

(5) If a third trafficking offense is committed by the firm, the firm shall not be eligible for a civil money penalty in lieu of disqualification.

(k) *Payment of civil money penalty in lieu of a permanent disqualification for trafficking*. Payment of the full amount of the civil money penalty in lieu of permanent disqualification for trafficking shall be made within 30 days of the date the final determination was received by the firm. If payment is not made within the prescribed period, the right to the civil money penalty in lieu of a permanent disqualification is forfeited and disqualification shall become effective immediately.

(l) *Fines for the acceptance of loose coupons*. FNS may impose a fine against any retail food store or wholesale food concern that accepts coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in § 278.2(d) or coupons accepted from homeless meal

providers as specified in § 278.2(c). The fine to be assessed against a firm found to be accepting loose coupons shall be $500 per investigation *plus* an amount equal to double the face value of each loose coupon accepted, and may be assessed and collected in addition to any fiscal claim established by FNS. The fine shall be paid in full within 30 days of the firm's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine. FNS may withdraw the authorization of the store, as well as other authorized locations of a multi-unit firm which are under the same ownership, for failure to pay such a fine as specified under § 278.1(k). FNS may deny the authorization of any firm that has failed to pay such fines as specified under § 278.1(j).

(m) *Fines for unauthorized third parties that accept food stamps.* FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food Stamp Act or the program regulations, including violations involving the acceptance of coupons. The fine shall be $1,000 for each violation *plus* an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

(n) *Review of determination.* The determination of FNS shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in part 279 of this chapter.

Notwithstanding the above, any FNS determination made on the basis of paragraph (e)(8) of this section shall not be subject to further administrative or judicial review.

(o) *Delivery of notice.* The delivery by any method that provides evidence of delivery of any notice required of FNS by this part will constitute notice to the addressee of its contents.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 278.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 278.7 Determination and disposition of claims—retail food stores and wholesale food concerns.

(a) *Claims against violators.* FNS may establish and pursue claims against firms or other entities which have accepted or redeemed coupons in violation of the Food Stamp Act or this part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FNS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of § 278.1(b)(4). FNS shall deny an application for authorization or reauthorization by a firm which has failed to pay a claim.

(b) *Forfeiture of a collateral bond or draw down on an irrevocable letter of credit.* If FNS establishes a claim against an authorized firm which has previously been sanctioned, collection of the claim may be through total or partial forfeiture of the collateral bond or draw down of the irrevocable letter of credit. If FNS determines that forfeiture or a draw down is required for collection of the claim, FNS shall take one or more of the following actions, as appropriate.

(1) Determine the amount of the bond to be forfeited or irrevocable letter of credit drawn down on the basis of the loss to the Government through violations of the Act, and this Part, as detailed in a letter of charges to the firm;

(2) Send written notification by method of proof of delivery to the firm and the bonding agent or commercial bank of FNS' determination regarding

forfeiture or draw down of all or specified part of the collateral bond or irrevocable letter of credit and the reasons for the forfeiture or draw down action;

(3) Advise the firm and the bonding agent or commercial bank of the firm's right to administrative review of the claim determination;

(4) Advise the firm and the bonding agent or commercial bank that if payment of the current claim is not received directly from the firm, FNS shall obtain full payment through forfeiture of the bond or draw down of the irrevocable letter of credit;

(5) Proceed with collection of the bond or irrevocable letter of credit in the amount forfeited or drawn down if a request for review is not filed by the firm within the period established in § 279.5 of this chapter, or if such review is unsuccessful; and

(6) Upon the expiration of time permitted for the filing of a request for administrative and/or judicial review, deposit the bond or irrevocable letter of credit in a Federal Reserve Bank account or in the Treasury Account, General. If FNS requires only a portion of the face value of the bond or irrevocable letter of credit to satisfy a claim, the entire bond or irrevocable letter of credit will be negotiated, and the remaining amount returned to the firm.

(c) *Coupons accepted without authorization.* (1) The FNS officer in charge may approve the redemption under § 278.4 of coupons accepted by firms before the receipt of an authorization card from FNS if the following conditions exist:

(i) The coupons were received in accordance with the requirements of this part governing acceptance of coupons except the requirement that the firm be authorized before acceptance;

(ii) The coupons were accepted by the firm in good faith, and without intent to circumvent this part; and

(iii) The firm receives authorization to participate in the program.

(2) Firms seeking approval to redeem coupons accepted without authorization shall present a written application for approval to the local FNS field office. This application shall be accompanied by a written statement signed by the firm of all the facts about the acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent this part.

(d) *Burned or mutilated coupons.* FNS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FNS field office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an estimate of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase ''Deputy Administrator for Fiscal Management, FNS, USDA,'' should be entered in the section of the redemption certificate for entering the name and address of the insured financial institution or wholesaler.

(e) *Old series coupons.* FNS may redeem the old series food coupons issued in 50-cent, 2-dollar, and 5-dollar denominations when they are presented for redemption. Firms presenting the coupons for redemption shall submit the coupons to the local FNS field office with a properly completed redemption certificate and a written statement, signed by a representative of the firm, detailing the circumstances of the acceptance of the coupons.

(f) *Denials of claims brought by authorized firms against FNS.* If a claim brought by a firm against FNS under this section is denied in whole or in part, notification of this action shall be sent to the firm by using any delivery method as long as the method provides evidence of delivery. If the firm is aggrieved by this action, it may seek administrative review as provided in part 279.

(g) *Lost or stolen coupons.* FNS may not be held liable for claims from retail food stores, meal services, or wholesale

food concerns for lost or stolen coupons.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978, as amended by Amdt. 258, 49 FR 28393, July 12, 1984; Amdt. 257, 49 FR 32538, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984; 68 FR 41052, July 10, 2003; Amdt. 397, 70 FR 72354, Dec. 5, 2005; 73 FR 79595, Dec. 30, 2008]

§ 278.8 [Reserved]

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

(a) *Amendment 224*. Retail food stores shall have signs posted as required by this amendment no later than 30 days after distribution of the signs by FNS.

(b) *Amendment 257*. With the exception of the provisions in § 278.5 requiring redeeming financial institutions to verify that coupons are supported by redemption certificates, the revisions to part 278 shall be effective September 14, 1984. Redeeming financial institutions shall begin verifying coupon deposits as required by § 278.5 in accordance with the schedule determined by the Federal Reserve Board. Insured financial institutions shall adhere to preexisting requirements for handling redemption certificates (at 7 CFR 278.5(a)) until their Federal Reserve District implements the procedures contained in this final rule. FNS shall not be liable for any losses of coupons in transit to Federal Reserve Banks or as a result of a burglary or robbery of an insured financial institution which occur after September 14, 1984.

(c) *Amendment 267*. The federally insured credit unions authorized to redeem food stamps under this amendment may begin accepting food stamps for redemption not later than March 27, 1986.

(d) The program changes of *Amendment 272* at § 278.5(a) (1) and (3) are effective upon publication of the amendment. Financial institutions must implement the provisions no later than April 21, 1986.

(e) *Amendment No. 286*. The provisions for part 278 of *Amendment No. 286* were effective March 11, 1987 for purposes of submitting applications for authorization to accept food stamps. For all other purposes, the effective date was April 1, 1987.

(f) *Amendment No. 280*. The provisions for part 271 and §§ 278.1(r) and 278.6(f) of No. 280 are effective retroactively to April 1, 1987. The provision for § 278.1(o) is effective May 22, 1987.

(g) *Amendment No. 304*. The technical amendment for part 278 of *Amendment No. 304* was effective August 1, 1988.

(h) *Amendment No. 323*. The program changes made to § 278.6 by this amendment are retroactively effective October 1, 1988.

(i) *Amendment No. 334*. The program changes made to §§ 278.1 and 278.6 by this amendment are effective February 1, 1992. The program changes made to § 271.2 and § 271.5 by this amendment are retroactively effective to November 28, 1990, as specified in Pub. L. No. 101–624.

(j) *Amendment No. 354*. The program changes made to §§ 271.2 and 278.6 by this amendment are effective October 1, 1993.

(k) *Amendment No. 331*. The program changes made to §§ 271.2 and 278.5 by this amendment are effective December 22, 1994.

(l) *Amendment No. 335*. Expanded authority to use and disclose information about firms participating in the FSP under CFR 278.1(r) for currently authorized firms is effective and will be implemented beginning February 25, 1997 but not before 60-days after the date of notices to such firms, notifying them of the changes. The only exception to the above is that such disclosure of information shall not apply to firms that are withdrawn or are disqualified from FSP participation prior to implementation, unless such firms participate in the FSP at a future date subsequent to the implementation date.

(m) *Amendment No. 383*. The program changes made to § 278.1 by this amendment are effective September 29, 2000.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 278.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 278.10 [Reserved]

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

Subpart A—Administrative Review

Sec.
279.1 Jurisdiction and authority.
279.2 Manner of filing requests for review.
279.3 Content of request for review.
279.4 Action upon receipt of a request for review.
279.5 Determination of the designated reviewer.
279.6 Legal advice and extensions of time.

Subpart B—Judicial Review

279.7 Judicial review.
279.8 Implementation of amendments relating to administrative and judicial review.

AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: Amdt. 136, 43 FR 43279, Sept. 22, 1978, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 279 appear at 68 FR 41052, July 10, 2003.

Subpart A—Administrative Review

§ 279.1 Jurisdiction and authority.

A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 of this chapter may, within a period stated in this Part, file a written request for review of the administrative action with FNS. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review, except in the case of a permanent disqualification as specified in § 278.6(e)(1) of this chapter.

(a) *Jurisdiction*. Reviewers designated by the Secretary shall act for the Department on requests for review filed by food retailers or wholesale food concerns aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under § 278.1 of this chapter;

(2) Disqualification under § 278.6 of this chapter, except that a disqualification for failure to pay a civil money penalty shall not be subject to administrative review and a disqualification imposed under § 278.6(e)(8) of this chapter shall not be subject to administrative or judicial review;

(3) Imposition of a fine under § 278.6 of this chapter;

(4) Denial of all or part of any claim asserted by a firm against FNS under § 278.7(c), (d), or (e) of this chapter;

(5) Assertion of a claim under § 278.7(a) of this chapter; or

(6) Forfeiture of part or all of a collateral bond or a draw down of part or all of a letter of credit under § 278.1 of this chapter, if the request for review is made by the authorized firm. FNS shall not accept requests for review made by a bonding company or agent or commercial bank.

(b) *Authority*. The determination of the designated reviewer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and subpart B of this part.

[68 FR 41052, July 10, 2003, as amended at 73 FR 79595, Dec. 30, 2008]

§ 279.2 Manner of filing requests for review.

(a) *Submitting requests for review*. Requests for review submitted by firms shall be mailed to or filed with Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

(b) *Content of requests*. Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

(c) *Time limit for requesting review*. A request for review shall be filed within 10 days of the date of delivery of the notice of the action for which review is requested. For purposes of determining whether a filing date is timely:

(1) The filing date shall be the postmark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the 10 day period, the day of delivery of the notice of the

action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, ''legal holiday'' includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or the Congress of the United States.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984. Redesignated and amended at 68 FR 41053, July 10, 2003]

§ 279.3 Content of request for review.

(a) *Identifying the request.* Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, a civil money penalty, or a denial of all or any part of a claim or a fine.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the designated reviewer shall notify the firm of the date by which the information must be filed.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984; Amdt. 334, 57 FR 3913, Feb. 3, 1992. Redesignated and amended at 68 FR 41053, July 10, 2003]

§ 279.4 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of administrative action, the administrative action shall be held in abeyance until the designated reviewer has made a determination. However, permanent disqualifications for trafficking shall not be held in abeyance and shall be effective immediately as specified in 278.6(b)(2) of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period. If the administrative action in question involves the denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond or the draw down on an irrevocable letter of credit, the designated reviewer shall direct the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture or irrevocable letter of credit withdrawal, as appropriate until the designated reviewer has made a determination.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the designated reviewer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS office shall be final.

(c) *Extensions of time.* Upon timely written request to FNS by the firm requesting the review, FNS may grant extensions of time if, in FNS' discretion, additional time is required for the firm to fully present information in support of its position. However, no extension may be made in the time allowed for the filing of a request for review.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22059, May 25, 1984; Amdt. 258, 49 FR 28393, July 12, 1984; 49 FR 29769, July 24, 1984; Amdt. 356, 59 FR 29714, June 9, 1994; 64 FR 23174, Apr. 30, 1999. Redesignated and amended at 68 FR 41053, July 10, 2003; 73 FR 79595, Dec. 30, 2008]

§ 279.5 Determination of the designated reviewer.

(a) *Basis for designated reviewer determination.* The designated reviewer shall make a determination based upon:

(1) The information submitted by the appropriate FNS office;

(2) Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the designated reviewer from any other person having relevant information.

(b) *Review of denial or withdrawal of authorization.* When the action under review is the denial of an application for authorization or the withdrawal of an existing authorization, the designated reviewer shall sustain the action under review; sustain the action under review, but specify a shorter period of time the action will remain in effect; or direct that the action under review be reversed.

(c) *Review of disqualification or civil money penalty or fine.* When the action under review is disqualifying a firm from program participation or assessing a civil money penalty or fine against a firm, the designated reviewer shall: Sustain the action under review; specify a shorter period of disqualification; specify a reduced money penalty or fine; direct that an official warning letter be issued to the firm in lieu of a disqualification, civil money penalty or fine; or, direct that the action under review be reversed. The designated reviewer may change a disqualification of a firm to a civil money penalty if the disqualification would cause a hardship to participating households (except in the case of a permanent disqualification). The designated reviewer, working with the appropriate FNS office, shall determine if circumstances warrant a civil money penalty in accordance with § 278.6 of this chapter.

(d) *Review of denial of claim.* In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the designated reviewer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) *Determination notifications.* FNS shall notify the firm of the determination. Such notification will be sent to the representative of the firm who filed the request for review.

(f) *Effective date.* The determination of the designated reviewer shall take effect 30 days after the date of delivery of the determination to the firm.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 334, 57 FR 3913, Feb. 3, 1992; Amdt. 356, 59 FR 29714, June 9, 1994. Redesignated and amended at 68 FR 41053, July 10, 2003]

§ 279.6 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the Benefit Redemption Division shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the designated reviewer by the firm requesting the review, the designated reviewer may grant extensions of time if, in the designated reviewer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 356, 59 FR 29714, June 9, 1994. Redesignated and amended at 68 FR 41053, July 10, 2003]

Subpart B—Judicial Review

§ 279.7 Judicial review.

(a) *Filing for judicial review.* Except for firms disqualified from the program in accordance with § 278.6(e)(8) of this chapter, a firm aggrieved by the determination of the designated reviewer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the designated reviewer in accordance with § 279.5(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any

such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the agency whose order is being attacked shall be sent by using any delivery method as long as the method provides evidence of delivery to the person in charge of the applicable regional office of FNS.

(c) *Trial de novo*. The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action*. During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994; 64 FR 23174, Apr. 30, 1999. Redesignated and amended at 68 FR 41053, July 10, 2003; Amdt. 397, 70 FR 72354, Dec. 5, 2005]

§ 279.8 Implementation of amendments relating to administrative and judicial review.

(a) *Amendment No. 257*. The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(b) *Amendment No. 274*. The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

(c) *Amendment No. 334*. The program changes made to part 279 by this amendment are effective February 1, 1992.

[Amdt. 257, 49 FR 32539, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 334, 57 FR 3913, Feb. 3, 1992. Redesignated at 68 FR 41053, July 10, 2003]

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 280 are contained in § 271.8.

§ 280.1 Interim disaster procedures.

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to section 4(c) of this Act or the procedures set forth in section 553 of Title 5 of the United States Code. In addition to establishing temporary emergency standards of eligibility, the Secretary shall provide for emergency allotments to eligible households to replace food destroyed in a disaster. Such emergency allotments would be equal to the value of the food actually lost in such disaster but not greater than the applicable maximum monthly allotment for the household size. The Secretary may also approve alternate methods for issuing food stamp benefits during a disaster when reliance on Electronic Benefits Transfer (EBT) systems is impracticable.

[Amdt. 192, 46 FR 8922, Jan. 27, 1981, as amended by Amdt. 338, 56 FR 63617, Dec. 4, 1991; Amdt. 397, 70 FR 72354, Dec. 5, 2005]

PART 281—ADMINISTRATION OF THE FOOD STAMP PROGRAM ON INDIAN RESERVATIONS

Sec.
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281.10 Appeals.

AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: 44 FR 35925, June 19, 1979, unless otherwise noted.

§ 281.1 General purpose and scope.

(a) These regulations govern the operation of the Food Stamp Program on Indian reservations either separately or concurrently with the Food distribution program. In order to assure that the Food Stamp Program is responsive to the needs of Indians on reservations, State agencies are required to consult with Indian tribal organizations about the implementation and operation of the Food Stamp Program on reservations. Also, under certain specified conditions Indian tribal organizations on reservations can administer the Food Stamp Program. The Act authorizes the Secretary to pay such amounts for administrative costs as are determined to be necessary for the effective operation of the Food Stamp Program on Indian reservations.

(b) The operation of the Food Stamp Program on Indian reservations is governed by all of the terms and conditions set forth in the Food Stamp Act of 1977 as amended and the regulations of this chapter.

(c) Additionally, under no circumstances shall any household participate simultaneously in the Food Stamp Program and the Food Distribution Program. Policy governing this prohibition is found in § 283.7(e).

§ 281.2 Administration.

(a) *Qualification.* (1) The appropriate ITO of an established Indian reservation will qualify for participation under the provisions of this part, when that ITO files an application which demonstrates the status of an area as an established reservation, unless FNS determines that such area(s) does not qualify as a reservation, as that term is defined in these regulations. For purposes of this part, established reservation means the geographically defined area(s) currently recognized and established by Federal or State treaty or by Federal statute whereby such geographically defined area(s) is set aside for the use of Indians. Where such established areas exist, the appropriate ITO is presumed to exercise governmental jurisdiction, unless otherwise determined by FNS:

(2) The appropriate ITO for other areas, in order to qualify as reservations for the provisions of this part, must show to FNS:

(i) That the ITO exercises governmental jurisdiction over a geographic area(s) which enjoys legal recognition from the Federal or a State government and is set aside for the use of Indians.

(ii) A clear and precise description of the boundaries of such geographic area(s).

(3) Otherwise qualified areas for which the responsible ITO has requested operation of the Food Distribution Program alone in accordance with § 283.4, rather than concurrent operation with the Food Stamp Program, shall be exempt from the requirements of this part, and shall not be considered food stamp areas for any other purposes of this subchapter. Indian tribal households (households in which at least one adult member is recognized by the appropriate ITO as a tribal member) resident in these areas shall be ineligible for food stamp benefits. However, non-Indian tribal households resident in these areas may apply and be certified for food stamps at the State agency's certification office which would otherwise service the area. Otherwise qualified areas for which the responsible ITO has requested operation of the food distribution Program concurrently with the Food Stamp Program or areas within the reservation where FNS has determined that concurrent operation is necessary in accordance with

§283.3(b)(2) shall be subject to all requirements of this part and subchapter.

(b) *State plan*. In addition to the public comment requirements in §272.2, the State agency shall submit for comment its service plans, and all other portions of the State plan that directly pertains to the operation of the Program for residents on the reservation to the responsible ITO for reservations that qualify under paragraph (a) of this section. The ITO shall have 30 days to provide comments in writing to the State agency. The State agency shall, if appropriate and to the extent practicable, incorporate into its plans any suggestions made by the ITO. Additionally, the State agency shall administer the Food Stamp Program in a manner that is responsive to the needs of the Indians on the reservation, as determined by ongoing consultation with the ITO and by other means, regarding such areas of program operation as project area designation, operating procedures, locations and hours of certification and issuance, staffing and corrective action plans. The State agency shall maintain records of consultations on State plans and ongoing consultations held with ITO's for review by FNS. FNS shall study these records as part of reviews in accord with §281.3 and Management Evaluation Reviews of the State agency.

(c) *Project area designation*. (1) An Indian reservation shall be designated as a separate project area or areas for the purpose of improving the accessibility of program services to Indians on the reservation unless:

(i) The State agency demonstrates to FNS that the size or population of the reservation does not warrant such designation;

(ii) The State agency demonstrates to FNS that the tribe can be adequately served by the existing or a planned project area because of the location of certification and issuance offices;

(iii) The State agency demonstrates to FNS that such designation would reduce the availability of certification and issuance offices; or

(iv) The State agency otherwise demonstrates to FNS that such designation would impair its Statewide administration of the Program.

(2) In the case where the Indian reservation boundaries cross State lines, the ITO and the appropriate State agencies may jointly request FNS approval that a single State agency administer the Food Stamp Program on all or part of the Indian reservation. A single agency of the State government would have to administer the Program under the same terms and conditions applied to all other political subdivisions within its jurisdiction. An ITO designated as a State agency pursuant to §281.4(d) would have to administer the Program under the same terms and conditions on all areas of the reservation.

(d) *Contracts with an Indian tribal organization*. The State agency may contract program functions to an ITO. These functions include, but are not limited to, outreach, preparation of bilingual materials on issuance. The State agency may also use the ITO in prescreening, translations, interpretive services and other noncertification functions. The State agency shall not contract responsibility for certification activities such as interviews or eligibility determinations. In all cases, the State agency shall retain full responsibility for program administration.

[44 FR 35925, June 19, 1979, as amended by Amdt. 207, 47 FR 52338, Nov. 19, 1982]

§281.3 Determination of failure.

(a) *Request for determination of State government agency failure*. FNS shall examine State agency adminstration of the Food Stamp Program on all or part of a reservation when requested by the ITO, the State agency or at FNS' discretion. When FNS determines that a deficiency in a State agency operation of the Food Stamp Program on all or part of an Indian reservation may be serious enough to warrant a review, FNS shall advise the State agency and the ITO in writing of the alleged deficiencies and of its plans to conduct the review and document deficiencies, if any are found. Subsequent to October 1, 1979 FNS shall complete these reviews within 90 days from receipt of an ITO's or State agency's request except under unusual circumstances such as the receipt of a large number of simultaneous requests.

(b) *Review*—(1) *Content of the review for State agency performance*. The review shall be designed to determine whether or not the State agency is properly administering the Food Stamp Program on a specific reservation. When an agency of State government is administering the Program on a reservation, FNS shall as a part of the review consult with the ITO about the operation of the Program on the reservation. The review should, depending on the nature of the complaint, include but not be limited to, an analysis of some or all of the following data:

(i) The records of State agency consultation with the ITO required under § 281.2(a);

(ii) The estimated percentage of all eligible Indians on the reservation who are participating the Program;

(iii) The nature and extent of violations, if any, of the 30-day and other processing standards for Indians;

(iv) The percentage of errors made in determining eligibility and/or the amount of benefits overissued or underissued;

(v) Compliance with standards for location and hours of certification and issuance offices as required in § 272.5;

(vi) Compliance with bilingual requirements of this regulation, where appropriate;

(vii) Compliance with nondiscrimination requirements of this regulation;

(viii) Compliance with other significant program requirements;

(ix) Comparison with services provided in all other areas of the State; and

(x) Any other relevant information that becomes available during the course of reviews including information received through contacts with the Indian tribe.

(2) *Finding of no or of minor deficiencies*. If after the review FNS determines either that deficiencies do not exist or that only minor deficiencies exist, FNS shall issue a report documenting its findings to both the State agency and the ITO and shall work closely with the State agency to achieve corrective action.

(c) *Formal warning*. After the review is completed, if FNS determines that major deficiencies exist, a formal warning shall be issued to the State, with a copy to the ITO. At a minimum, such warning shall indicate the State agency deficiencies and shall detail the basis upon which deficiencies were determined. The State shall have 30 days to respond with evidence that it is in compliance or to submit a corrective action proposal under part 276. If satisfactory compliance is achieved by the State agency on deficiencies cited in a formal warning, FNS shall notify the State, with a copy to the ITO, that the warning for those deficiences is satisfied.

(d) *Determination of failure and sanctions*. If at any time after the formal warning period, or during or after the corrective action period, FNS determines that major deficiencies still exist which the State agency has not satisfactorily addressed or is not satisfactorily addressing, FNS shall determine State failure and may impose appropriate Federal sanctions on the State agency as specified in part 276.

(e) *ITO operations*. If FNS has determined State failure and FNS has also determined that the ITO is capable of administering a Food Stamp Program in accordance with the terms and requirements for participating State agencies as established in the Act and regulations, then the ITO shall assume adminstration of the Food Stamp Program on the reservation. The State agency shall continue to administer the Food Stamp Program on the reservation until an effective termination and transition arrangement has been completed in accordance with § 281.8.

§ 281.4 Determining Indian tribal organization capability.

(a) *Determining capability of ITO*. If the ITO wishes to administer its own Food Stamp Program on the reservation FNS shall determine the ITO's potential capability for administering the Food Stamp Program in accordance with the criteria listed in § 281.4(b). FNS shall begin to evaluate the ITO's capability for all aspects of Food Stamp Program administration, allowing for fulfillment of that potential through necessary training and technical assistance, not later than the date of the issuance of the formal warning to the State agency.

(b) *ITO responsibility*. (1) The ITO must satisfy FNS that it is capable (if provided with any needed training and technical assistance) of administering the Food Stamp Program effectively and efficiently, and of complying with all provisions of the Food Stamp Act of 1977, as amended, and the regulations of this chapter, including provisions governing quality control procedures, fraud determinations, and establishment and collection of claims for both Indian and any non-Indian participants. The ITO shall provide FNS with the following information:

(i) *Operation of government programs*. The ITO shall provide FNS a list of all government programs that the ITO administers and has recently administered. FNS may ask the ITO to provide the names of appropriate officials of the government organizations having jurisdiction over these programs so FNS can obtain all relevant audits, GAO reports, program evaluations and any other documents pertaining to the effectiveness and efficiency of tribal administration of these programs. The ITO shall also provide FNS a list of its recent contractual responsibilities, if any, for the Food Stamp Program under §281.2(b).

(ii) *Fiscal capabilities*. The ITO shall provide FNS documentation of its bookeeping and accounting procedures, including procedures in use for fiscal accountability under part 277 and for other government programs that the ITO administers.

(iii) *Projected certification and issuance facilities*. The ITO shall provide FNS with a description of the location of projected certification and issuance facilities.

(iv) *Fraud hearings and claims*. The ITO shall provide FNS with a description of how it will pursue fraud hearings and claims against Indian and non-Indian participants.

(v) *Staffing*. The ITO shall provide FNS with sufficient information to determine that personnel who will be used in the certification process will be employed under standards equivalent to current standards for a Merit System of Personnel Administration or any standards later prescribed by the Office of Personnel Management under section 208 of the Intergovernmental Personnel Act of 1970.

(vi) *Civil rights assurance*. The ITO shall provide FNS an assurance that the ITO shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 99–112), section 504), and section 11(c) of the Food Stamp Act of 1977 and all pertinent regulations or directives to the effect that no person in the United States shall, on the grounds of sex, race, color, age, political belief, religion, handicap, or national origin, be denied benefits or otherwise be subject to discrimination under the Food Stamp Program. Where appropriate, FNS shall consider the adequacy of measures taken by the ITO to ensure that there shall be no discrimination.

(2) Prior to the determination of ITO capability, FNS shall consult with other sources such as the Bureau of Indian Affairs (BIA) to obtain any information relevant to the capability determination.

(3) If it is determined by FNS, after consultation with other sources such as the BIA, that the ITO is not capable of operating an efficient and effective Food Stamp Program, the agency of the State government shall continue to operate the Program on the reservation in accordance with §281.3.

(c) *Training and technical assistance*. Upon determining that the State agency has failed to properly administer the Food Stamp Program and that the ITO is potentially capable of operating an effective and efficient Food Stamp Program, FNS shall determine, based on information provided by the ITO and other sources such as BIA, the training and technical assistance which is necessary to assure efficient and effective program administration. FNS will assure that appropriate training and technical assistance is provided as expeditiously as possible prior to the ITO's assumption of the administration of the Food Stamp Program.

(d) *Assumption of duties*. When FNS is satisfied that the ITO has successfully completed (c) of this section, FNS shall designate the ITO as a State agency, contingent on the following:

(1) *State plans*. The ITO shall prepare and submit to FNS a Plan of Operation

as provided in § 272.2. In completing the Plan of Operation the ITO shall affirm that it will comply with the Civil Rights assurances detailed in (b)(1)(vi) of this section.

(2) *Proposed budget.* As part of the Plan of Operation, the ITO shall annually submit to FNS a proposed statement which shall provide a summary of program information and amounts budgeted to carry out the various program functions. This information shall be submitted to FNS for approval prior to the commitment of any Federal funds for administrative costs for that year. FNS shall provide the ITO any technical assistance which is necessary to prepare this information.

(3) *Termination and transition arrangement.* An effective termination and transition arrangement shall be established as required in § 281.8.

§ 281.5 Responsibilities of an Indian tribal organization designated as State agency.

An ITO administering the Food Stamp Program on a reservation shall adhere to the Food Stamp Act of 1977, all subsequent amendments, and all regulations issued pursuant to that law in the same manner as any other State agency. The ITO may contract certain administrative functions to private organizations as provided in parts 274 and 277. The ITO may not, however, contract responsibility for certification activities such as interviews or eligibility determinations. The ITO shall retain full responsibility for program administration.

§ 281.6 Liabilities and sanctions.

An ITO administering the Food Stamp Program on a reservation is subject to the same liabilities and Federal sanctions as is any other State agency. FNS shall monitor administration of the Program and conduct reviews through the Performance Reporting System described in part 275. When necessary, warning procedures and other Federal sanctions prescribed in part 276 will be implemented.

§ 281.7 Indian tribal organization failure.

When Performance Reporting System reviews indicate that continuing deficiencies exist and corrective action proposals (including training and technical assistance to overcome these deficiencies), and/or appropriate sanctions have not, in the opinion of FNS, resulted in a sufficient degree of improvement, FNS will conduct a review to determine if the ITO has failed to properly administer the Food Stamp Program. FNS shall examine the relevant factors specified in § 281.3(b)(1) and shall follow the notification and determination procedures set forth in § 281.3 (c) and (d). If ITO failure is determined, FNS shall require the appropriate agency of the State government to resume administration of the Program on the reservation in accordance with an approved termination and transition arrangement.

§ 281.8 Transfer of program administration.

The transfer of program administration from an agency of the State government to an ITO pursuant to a determination of failure as provided for in § 281.3, or from an ITO to an agency of the State government pursuant to § 281.7, shall be contingent on the establishment of an effective termination and transition arrangement and an approved Plan of Operation from the State agency assuming program administration. Grant closeout procedures shall be followed in accordance with part 277. FNS shall approve the transition plan, monitor its implementation and resolve any issues which may arise during the transition and after the transfer of program administration.

§ 281.9 Funding.

(a) *Agency of State government.* From the funds available to carry out this provision beginning July 1, 1979, FNS may pay to each agency of State government administering a Food Stamp Program on a reservation, 75 percent of all approved administrative costs, such as: Certification, issuance, outreach, fair hearings and quality control, incurred on the reservation for residents of the reservation and approved by FNS to meet standards set by the 1977 Food Stamp Act. FNS may pay each agency of State government administering a Food Stamp Program on a

reservation 75 percent of all approved administrative costs incurred off the reservation for activities begun after the effective date of these regulations that are primarily directed at providing better services for Indians on the reservation, such as hiring an interpreter or an Indian outreach worker, or moving a certification or issuance center closer to a reservation. The provisions of part 277 apply to any funds received under this section.

(b) *Indian tribal organization acting as State agency*. From the funds available to carry out the provisions of this part beginning October 1, 1979, FNS is authorized to pay to each ITO acting as a State agency and administering a Food Stamp Program on a reservation 75 percent of all administrative costs approved by FNS as needed for operation of a Food Stamp Program on a reservation. Any approval for payment of funds in excess of 75 percent must be based on compelling justification that such additional amounts are necessary for the effective operation of the Food Stamp Program on the reservation. The provisions of part 277 apply to any funds received under this section.

§ 281.10 Appeals.

(a) *Failure/capability*. (1) Any State agency or ITO may appeal the determination made by FNS on:

(i) Whether or not the reservation definition is met;

(ii) The failure or absence of failure of an agency of State government to properly administer the Food Stamp Program;

(iii) The capability or incapability of an ITO to administer the Food Stamp Program;

(iv) The failure of an ITO to properly administer the Food Stamp Program;

(v) The Federal matching percentage level of administrative funding made available by FNS. To prevail the State agency must show a compelling justification that additional funding is needed for the effective administration of the Program on the reservation.

(2) At the time FNS advises the State agency or ITO of its determination, FNS shall also advise the State agency or ITO of its right to appeal and, except for appeals of funding determinations, shall advise the State agency or ITO of its right to request either a meeting to present its position in person or a review of the record. On appeals of funding determinations, FNS shall advise the State agency or ITO that it may indicate if it wishes a meeting, however, FNS need schedule a meeting only if FNS determines a meeting is warranted to reach a proper adjudication of the matter. Otherwise, FNS shall review supportive information submitted by the State agency or ITO in paragraph (b)(2) of this section.

(b) *Procedures*—(1) *Time limit*. Any State agency or ITO which wants to appeal an initial FNS determination under paragraph (a) of this section must notify the Administrator of FNS, in writing within 15 days from the date of the determination and must advise FNS if it wishes a meeting or a review of the record.

(2) *Acknowledgment*. Within five days of receipt by the Administrator of FNS of a request for review, FNS shall provide the State agency or ITO by certified mail, return receipt requested, with a written acknowledgement of the request. The acknowledgment shall include the name and address of the official designated by the Administrator to review the appeal. The acknowledgment shall also notify the State agency or ITO that within ten day of receipt of the acknowledgment, the State agency or ITO shall submit written information in support of its position.

(3) *Scheduling a meeting*. If the Administrator, FNS, grants a meeting FNS shall advise the State agency or ITO by certified mail, return receipt requested, of the time, date and location of the meeting at least ten days in advance of the meeting. FNS shall schedule and conduct the meeting and make a decision within 60 days of the receipt of the information submitted in response to paragraph (b)(2) of this section.

(4) *Review*. If no meeting is conducted, the official designated by the Administrator, FNS, shall review information presented by a State agency or ITO which requests a review, and shall make a final determination in writing within 45 days of the receipt of the State agency's or ITO's information submitted in response to paragraph

(b)(2) of this section setting forth in full the reasons for the determination.

(5) *Final decision*. The official's decision after a meeting or a review shall be final.

(c) *Funding and other sanctions*. Any State agency or ITO that wishes to appeal a funding determination made by FNS other than under (a)(5) of this section, or the application of a Federal sanction, shall follow the Administrative Review Procedures set forth in part 276.

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

Sec.
282.1 Legislative authority and notice requirements.
282.2 Funding.

AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: Amdt. 134, 43 FR 54215, Nov. 21, 1978, unless otherwise noted.

§ 282.1 Legislative authority and notice requirements.

(a) *Legislative authority*. Section 17 of the Act authorizes the Secretary to conduct demonstration, research, and evaluation projects. In conducting such projects, the Secretary may waive all or part of the requirements of the Act and implementing regulations necessary to conduct such projects, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households or a project conducted to test improved consistency or coordination between the food stamp employment and training program and the Job Opportunities and Basic Skills program under Title IV of the Social Security Act, may be undertaken which would lower or further restrict the established income and resource standards or benefit levels.

(b) *Notices*. At least 30 days prior to the initiation of a demonstration project, FNS shall publish a General Notice in the FEDERAL REGISTER if the demonstration project will likely have a significant impact on the public. The notice shall set forth the specific operational procedures and shall explain the basis and purpose of the demonstration project. If significant comments are received in response to this General Notice, the Department will take such action as may be appropriate prior to implementing the project. If the operational procedures contained in the General Notice described above are significantly changed because of comments, an amended General Notice will be published in the FEDERAL REGISTER at least 30 days prior to the initiation of the demonstration project, except where good cause exists supporting a shorter effective date. The explanation for the determination of good cause will be published with the amended General Notice. The amended General Notice will also explain the basis and purpose of the change.

[Amdt. 371, 61 FR 60012, Nov. 26, 1996]

§ 282.2 Funding.

Federal financial participation may be made available to demonstration, research, and evaluation projects awarded by FNS through grants and contracts. Funds may not be transferred from one project to another. FNS will pay all costs incurred during the project, up to the level established in the grant, or in the terms and conditions of the contract. FNS may grant time extensions of the project upon approval. Funding for additional costs is subject to existing Federal grant and contract procedures.

[Amdt. 371, 61 FR 60012, Nov. 26, 1996]

PART 283—APPEALS OF QUALITY CONTROL (''QC'') CLAIMS

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AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: Amdt. 348, 59 FR 34561, July 6, 1994, unless otherwise noted.

Subpart A—General

§ 283.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 283.2 Scope and applicability.

The rules of practice in this part, shall be applicable to appeals by State agencies of Food and Nutrition Service quality control (QC) claims for Fiscal Year (''FY'') 1986 and subsequent fiscal years pursuant to sections 14(a) and 16(c) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2023(a) and 2025(c).

§ 283.3 Definitions.

As used in this part, the terms as defined in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032 (''Act''), and in the regulations, standards, instructions or orders issued thereunder, shall apply with equal force and effect. In addition, and except as may be provided otherwise in this section:

Administrator means the Administrator, Food and Nutrition Service, U.S. Department of Agriculture (''USDA'').

ALJ means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

Appeal means the appeal to the ALJ.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include procedural matters.

Filing. A pleading or other document allowed or required to be filed in accordance with this part shall be considered filed when postmarked, if mailed, or when received, if hand delivered.

FNS means the Food and Nutrition Service, USDA.

Hearing means that part of the appeal which involves the submission of evidence before the ALJ for the record in the appeal.

Hearing Clerk means the Hearing Clerk, USDA, Washington, DC 20250.

Judicial Officer means an official of the USDA delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law 97–35, title I, sec. 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

OC claim means a claim made pursuant to 7 U.S.C. 2025(c).

Secretary means the Secretary of the USDA.

State agency means:

(1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State,

and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency; and

(2) The Indian tribal organization of any Indian tribe determined by the Secretary to be capable of effectively administering a Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2032.

Subpart B—Appeals of QC Claims of $50,000 or More

§ 283.4 Filing appeals for QC claims of $50,000 or more.

(a) *Time*. A State agency may appeal the bill for collection from FNS for a QC claim of $50,000 or more for a food stamp QC error rate in excess of the tolerance level. A State agency shall file a written notice of appeal, in accordance with this subpart, within 10 days of receipt of the bill for collection from FNS for a QC claim of $50,000 or more. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies*. The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing*. The notice of appeal shall be filed with the Hearing Clerk in accordance with § 283.22(b).

(d) *Content of the notice*. (1) A notice of appeal, in order to be considered acceptable, must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of $50,000 or more identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice, dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number*. Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advice that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) Advice that the State agency must file and serve its appeal petition, as set forth in § 283.22, not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection*. The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of the appeal petition*. The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that

constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists;

(2) The nature of the relief sought, and;

(3) A request for an oral hearing, if desired by the State agency. Failure to request an oral hearing will result in a forfeiture of the opportunity for such a hearing, except as provided in § 283.15(a).

(h) *FNS answer*. Upon service of the State agency appeal petition, FNS shall:

(1) File an answer, in accordance with § 283.6, not later than 60 days after the State agency submits its appeal petition and;

(2) Advise the Hearing Clerk if FNS wishes to have an oral hearing.

(i) *Oral hearing not requested*. If no oral hearing has been requested, the appeal shall proceed in accordance with the procedures set forth under subpart C of this part.

§ 283.5 Motion to dismiss.

(a) *Filing of motion to dismiss*. Prior to or at the same time as filing the answer, FNS may file a motion to dismiss. The appeal may be challenged on the basis that the notice of appeal was not filed within 10 days or as that time may have been extended by the ALJ, the appeal petition was not filed in accordance with § 283.4, or that the appeal petition is substantially incomplete and could not be quickly and easily cured by amendment. The motion must be accompanied by clear and convincing proof of any of these factors alleged as grounds for dismissal.

(b) *Service of motion to dismiss*. FNS shall serve the State agency with a copy of the motion to dismiss. The State agency will have 10 days from date of service to submit objections to the motion.

(c) *Ruling on a motion to dismiss*. The ALJ will rule on the motion to dismiss before any further action proceeds on the basis of the merits of the appeal. The basis of the ruling will be clearly documented and will become part of the official record. If the ALJ denies the motion, FNS shall file its answer in accordance with § 283.6 within 60 days of service of the ALJ's ruling, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(d) *Dismissal of appeal*. If the ALJ finds the basis for the motion to have merit, the appeal may be dismissed. The initial decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Waiver*. Failure to file for dismissal of the appeal by the time the answer is required to be filed will result in waiver of the right to request dismissal.

§ 283.6 Answer.

(a) *Filing and service*. Not later than 60 days after the State agency submits its appeal petition, or within 60 days following service of a ruling in accordance with § 283.5, FNS shall file an answer signed by the FNS Administrator or authorized representative or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(b) *Contents*. The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(1) Clearly set forth any defense asserted by FNS; or

(2) State that FNS admits all the facts alleged in the appeal petition; or

(3) State that FNS admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default*. Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation, unless FNS and the State agency have agreed to a consent decision pursuant to § 283.10.

§ 283.7 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of hearing. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such motion and proposed decision, FNS may file objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of the State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.8 Rebuttal or amendment of appeal or answer.

(a) Not later than 30 days after FNS submits an answer in accordance with § 283.6, the State agency may submit rebuttal evidence.

(b) At any time prior to the filing of a motion for a hearing pursuant to § 283.15(b), the appeal petition or the answer may be amended without prior authorization by the ALJ. Thereafter, such an amendment may only be made as authorized by the ALJ upon a showing of cause.

§ 283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all opportunity to appeal or seek further administrative or judicial review on the claim or related matters.

§ 283.10 Consent decision.

At any time before the ALJ files an initial decision, FNS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall be final and shall take effect 30 days after the date of the delivery or service of such decision and is not subject to further administrative or judicial.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. Prehearing conferences may be conducted telephonically. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures

that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The nature of and the date by which discovery, as provided in § 283.12, must be completed;

(8) The identification of documents or matters of which official notice may be requested;

(9) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(10) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* (1) A prehearing conference will not be stenographically reported unless so directed by the ALJ.

(2) Any party to the appeal may, upon motion, request the ALJ to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

(e) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the ALJ elects to make a statement on the record at the hearing summarizing the actions taken.

§ 283.12 Discovery.

(a) *Dispositions*—(1) *Motion for taking deposition.* Only upon a finding by the ALJ that a deposition is necessary to preserve testimony as provided in this subparagraph, upon the motion of a party to the appeal, the ALJ may, at any time after the filing of the answer, order the taking of testimony by deposition. The motion shall set forth:

(i) The name and address of the proposed deponent;

(ii) The name and address of the person (referred to hereafter in this section as the ''officer'') qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(iii) The proposed time and place of the examination, which shall be at least 15 days after the date of service of the motion; and

(iv) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for use as provided in accordance with paragraph (a)(7) of this section.

(2) *ALJ's order for taking depositions.* If the ALJ finds that the testimony may not otherwise be available at the hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) The time and place of the examination;

(ii) The name of the officer before whom the examination is to be made; and

(iii) The name of the deponent. The officer and the time and place need not be the same as those suggested in the motion.

(3) *Qualifications of officer.* The deposition shall be made before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(4) *Procedure on examination.* (i) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. Objections to questions or documents shall be in the short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may

transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(ii) The party taking the deposition shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the ALJ. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the appeal and filed with the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(iii) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be taken by telephone. A deposition taken by telephone is to be taken at the place where the deponent is to answer questions propounded to the deponent.

(iv) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the manner of recording, preserving and filing of the deposition, and may include other provisions to assure that the recorded testimony is accurate and trustworthy.

(5) *Certification by the officer*. The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the appeal, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(6) *Corrections to the transcript*. (i) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript of the deposition.

(ii) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(iii) At any time prior to the use of the deposition in accordance with paragraph (a)(7) of this section and after consideration of any objections filed thereto, the ALJ may issue an order making any corrections in the transcript which the ALJ finds are warranted, and these corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(7) *Use of depositions*. A deposition ordered and taken in accordance with the provisions of this section may be used in an appeal under these rules if the ALJ finds that the evidence is otherwise admissible and

(i) That the witness is deceased;

(ii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

(iii) That the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or

(iv) That such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, any other party may require the introduction of any other part which is relevant be considered with the part introduced, and any party may introduce any other parts.

(b) *Interrogatories, requests for admissions and requests for production of documents*—(1) *Interrogatories*. A party may submit written interrogatories to any other party to an appeal. The time for submitting and responding to written interrogatories shall be set by the ALJ at the pre-hearing conference, but in no event shall the time for response be less than 20 days from the date of service or within such time as determined upon motion to the ALJ. The number of interrogatories submitted by each

party shall not exceed twenty-five questions including subparts, unless additional interrogatories are authorized by the ALJ. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under penalty of perjury by the person making them. Objections shall be signed by the attorney of record in the appeal or by the responding party's authorized representative.

(2) *Request for admissions.* A party may submit a written request for admission of the truth of any matters relevant to the appeal to any other party to the appeal. The time for submitting a written request for admission shall be set by the ALJ at the pre-hearing conference. The number of admissions contained in a request submitted by a party shall not exceed twenty-five unless additional admissions are authorized by the ALJ. The matter is admitted unless, within 20 days after service thereof, or within such time as determined upon motion to the ALJ, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter signed by the party, counsel or designated representative. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for the failure to admit or deny unless it is stated that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) *Request for production of documents.* (i) Any party may serve upon any other party to the appeal a request for production of documents which are in the possession or control of the party upon whom the request is served. The time for service and response to such a request shall be set by the ALJ at the pre-hearing conference. Upon payment of fees for search and duplication of documents, any party to the appeal may obtain copies of such documents.

(ii) Parties may request production of any documents regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Grounds for objection will not exist if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(iii) If such documents include privileged information or information the disclosure of which is proscribed by the Food Stamp Act of 1977, as amended, such documents need not be produced.

(c) *Supplementation of response.* A party who knows or later learns that a response is incorrect is under a duty to correct such response as soon as possible. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired. A party is under a duty to supplement responses with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which such expert(s) is expected to testify, and the substance of the testimony.

(d) *Frequency and use of discovery.* The ALJ shall limit, upon motion of a party, the frequency or extent of discovery if the ALJ determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in

controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(e) *Protective orders*—(1) *Request for protective order*. A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating why discovery should be limited or should not be required.

(2) *Issuance of protective order*. In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That discovery not be had;

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(f) *Failure to respond to discovery*—(1) *Motions to compel*. If a deponent fails to respond or gives an evasive or incomplete answer to a question propounded at a deposition pursuant to paragraph (a) of this section or a party fails to respond or gives evasive or incomplete answers to written interrogatories or admissions, or fails to respond, in full or in part, to a request for production of documents served pursuant to paragraph (b) of this section, the party seeking discovery may apply for an order compelling an answer by filing and serving a motion on all parties and deponents.

(2) *Filing motion to compel*. (i) Such motion must be filed within 20 days following the service of the unresponsive answer upon deposition or within 20 days after expiration of the period allowed for answers to interrogatories or production of documents.

(ii) On matters related to an oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) *Responding to motion to compel*. A response to the motion may be filed in accordance with § 283.18(d).

(g) *Decision of the ALJ*. (1) The ALJ may grant a motion to compel production or deny a motion for a protective order only if the ALJ finds that the discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues; it is not unduly costly or burdensome; it will not unduly delay the proceeding; and the information sought is not privileged.

(2) The initial decision of the ALJ regarding the motion to compel the production of privileged documents or the motion for a protective order shall become final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

(h) *Failure to comply with an order*. (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by order of the ALJ, such refusal may subject the refusing party to proceedings to compel compliance with the ALJ's order in the appropriate United States district court.

(2) If any party or other person refuses to obey an order made under this section requiring an answer to designated questions or production of documents, the ALJ may order that the matters regarding which questions were asked or the contents of the document or documents or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(i) *Postponements or delays*. No hearing, proceeding or other matter under this part shall be postponed or otherwise delayed pending the response or resolution of issues pertaining to a request for information pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 283.13 Subpoenas.

(a) *Issuance of subpoenas*. The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the appeal may be required by subpoena at the designated place of hearing. Except

for cause shown, requests for subpoenas shall be filed at least 15 days prior to the date of the hearing. Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

(b) *Service of subpoenas.* (1) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with a copy of the subpoena, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(2) Subpoenas may be served:

(i) By a U.S. Marshal or deputy marshal,

(ii) By any other person who is not less than 18 years of age, or

(iii) By registering and mailing a copy of the subpoena addressed to the person to be served at the last known principal place of business or residence.

(3) Proof of service may be made:

(i) By the return of service on the subpoena by the U.S. Marshal or deputy marshal,

(ii) If served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein,

(iii) If served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein, or

(iv) If service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt. Where the subpoena is issued on behalf of the Secretary and service is by mail, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service.

(4) In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed, or, if such person is not immediately available, with any other responsible person authorized to accept service residing or employed at the place of residence or business of the person subpoenaed.

(5) The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same. The party at whose request the subpoena is issued shall be responsible for the service thereof.

§ 283.14 Fees of witnesses.

Witnesses summoned under these rules shall be paid the same fees and expenses that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose request the witness appears. Current Federal, State, or local government employees shall not be eligible to receive witness fees.

§ 283.15 Procedure for hearing.

(a) *Request for hearing.* A party may request a hearing on the facts by including such request in its Appeal Petition or Answer, whichever is appropriate. Failure to request a hearing within the time specified shall constitute a waiver of the opportunity for such a hearing, except as provided for under § 283.4(i). In the event FNS denies any material facts and fails to request a hearing, the matter may be set down for hearing on motion of the State agency or upon the ALJ's own motion.

(b) *Time and place.* If any material issue of fact is joined by the pleadings, the ALJ, upon motion of any party, stating that the matter is ready for hearing, shall set a time for the hearing, as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The hearing shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the hearing be held at another location. The ALJ shall file a notice stating the time and place of the hearing. If any change in the time of the hearing is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript or actual notice given to the parties.

(c) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's

designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(d) *Exchange of witness and rebuttal witness lists, statements and exhibits.* (1) Witness and rebuttal witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 283.12(a)(7), shall be exchanged at least 15 days in advance of the hearing or at such other time as may be set by the ALJ.

(2) A witness whose name does not appear on the witness list shall not be permitted to testify and exhibits which were not provided to the opposing party as provided above shall not be admitted into evidence at the hearing absent a showing of cause and as authorized by the ALJ.

(e) *Deparment of attorney or representative.* (1) Whenever an ALJ finds that a person acting as attorney or designated representative for any party to the appeal is guilty of unethical or contumacious conduct in, or in connection with an appeal, the ALJ may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken on any such order, but no appeal of the QC claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer. Provided, however, that the ALJ shall suspend the appeal of the QC claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(f) *Failure to appear.* (1) If FNS or the State agency, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing and to have admitted any facts which may be presented at the hearing. Such failure by either party shall also constitute an admission of all the material allegations of fact contained in any pleadings submitted by the other party. The party who appears shall have the option of whether to follow the procedure under § 283.7 or to present evidence, in whole or in part, in the form of declarations or by oral testimony before the ALJ.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the ALJ's initial decision, to file a motion for reconsideration pursuant to § 283.17(d) or to seek review by the Judicial Officer in accordance with § 283.20.

(g) *Order of proceeding.* Except as may be decided otherwise by the ALJ, FNS shall proceed first at the hearing. FNS has the burden of proving, by a preponderance of the evidence, the QC claim against the State agency for a QC error rate in excess of the tolerance level. The State agency will proceed second and must prove, by a preponderance of the evidence, the facts upon which it bases its appeal.

(h) *Evidence.* (1) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(2) Upon a finding of cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the appeal or whose presence is shown by a party to be essential to the presentation of the party's cause.

(3) After a witness called by either party has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the opposing party which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to

the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(4) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded by order of the ALJ insofar as practicable.

(i) *Inclusion in the record.* At the oral hearing or as ordered by the ALJ, depositions to the extent deemed admissible, written interrogatories, written requests for admission and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, written interrogatory, written request for admission or response thereto is offered in evidence by a party, any other party may require that all of it, which is relevant to the part introduced, be offered, and any party may introduce any other parts. Such depositions, written interrogatories, written requests for admission and respective responses thereto shall be admissible in evidence subject to such objections as to relevancy, materiality or competency of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

(j) *Objections.* (1) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross examination or to any other ruling by the ALJ, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the ALJ.

(2) Only objections made before the ALJ may be subsequently relied upon on review by the Judicial Officer.

(k) *Exhibits.* Four copies of each exhibit shall be filed with the ALJ. However, where there are more than two parties in the appeal, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(l) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(m) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(n) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of a document or other exhibit, it shall be marked for identification and inserted in the hearing record. In either event, if the Judicial Officer, upon review, determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, the evidence shall be considered a part of the transcript and hearing record. If the Judicial Officer determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, and that it would inappropriate to have such evidence considered a part of the hearing record without reopening the hearing, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(o) *Transcript.* Hearings shall be recorded and transcribed verbatim. The party requesting the hearing shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the ALJ and to the other parties to the appeal.

§ 283.16 Consolidation of issues.

Similar issues involved in appeals by two or more State agencies may be consolidated upon motion by the State agencies, FNS, or at the discretion of

the ALJ if it is decided that consolidation would help to promote administrative efficiency.

(a) *Disposition of consolidated issues.* If the ALJ orders consolidation, the issues consolidated will be considered first. If a hearing has been requested by any of the parties that have had issues consolidated, arguments on the consolidated issues will be heard before arguments on dissimilar issues. The ALJ will take the information into consideration along with arguments on other issues in preparing initial decisions for QC appeals in which some issues have been consolidated.

(b) *Initial decision.* (1) If the ALJ decides the evidence and arguments by the State agencies on the consolidated issues cannot be overcome by the evidence presented by FNS and are sufficient to grant the relief requested by a State agency or all State agencies in which the issue is involved, the ALJ shall prepare an initial decision as provided in § 283.17(c).

(2) FNS may file a motion for reconsideration pursuant to § 283.17(d) or seek review by the Judicial Officer in accordance with § 283.20.

§ 283.17 Post-hearing procedure.

(a) *Corrections to transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions of law, order and briefs, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the matter prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record. The transcript shall be deemed to be certified without further action by the ALJ.

(3) At any time prior to the filing of the ALJ's initial decision and after consideration of any objections filed as to the transcript, the ALJ may issue an order making any corrections in the transcript that the ALJ finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions of law, order, and briefs.* The parties may file proposed findings of fact, conclusions of law and orders based solely upon the record and on officially noticed matters, and briefs in support thereof. briefs may be filed at the discretion of the ALJ. The ALJ shall announce at the hearing the time within which these documents may be filed.

(c) *ALJ's initial decision.* (1) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. In accordance with § 283.22(f), the ALJ may, upon motion or *sua sponte,* extend this deadline for cause shown.

(2) The ALJ shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(3) Such initial decision shall be considered final for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(4) If no motion for reconsideration or review by the Judicial Officer is filed, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 day after service.

(d) *Motion for reconsideration.* (1) Except as provided in paragraph (d)(4) of this section, any party may file a motion for reconsideration of the initial decision within 30 days of service of the initial decision. If served by mail, the time for filing a motion for reconsideration will be 5 days longer in accordance with § 283.22.

(2) Every such motion must set forth the mattes claimed to have been erroneously decided and the basis of the alleged errors. Such motion shall be accompanied by a supporting brief.

(3) Responses to such motions shall be filed in accordance with § 283.18(d).

(4) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(5) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(6) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

(7) If the ALJ issues a revised initial decision, that decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

§ 283.18 Motions and requests.

(a) *Filing*. All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties by the moving or requesting party, except motions and requests made on the record during the oral hearing. The ALJ assigned to the appeal or the Chief Judge shall rule upon all motions and requests filed or made prior to seeking review of the ALJ's initial decision pursuant to § 283.20, except motions directly relating to such review. Thereafter, the Judicial Officer shall rule on any motions and requests as well as the motions directly relating to the review of the ALJ's initial decision.

(b) *Time for filing*. Any motion or request may be filed at any time, except that:

(1) Motions to dismiss pursuant to § 283.5 must be filed within the time allowed for filing an answer; and

(2) Motions for reconsideration must be filed within 30 days of service of the ALJ's initial decision pursuant to § 283.17(d).

(c) *Contents*. All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions and requests*. Within 10 days after service of any written motion or request or within such shorter or longer period as may be fixed by the ALJ or Judicial Officer, an opposing party may file a response to the motion or request. The moving party shall have no right to reply to the response; however, the ALJ or Judicial Officer may order that a reply be filed.

(e) *Certification to the Judicial Officer*. The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the seeking of review pursuant to § 283.20 shall be made by and in the discretion of the ALJ. The ALJ may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 283.19 ALJs.

(a) *Assignment*. No ALJ shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ*. (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers*. (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

(i) Rule upon motions and requests;

(ii) Set the time and place of a prehearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(iii) Administer oaths and affirmations;

(iv) Regulate the scope and timing of discovery;

(v) Issue and enforce subpoenas as authorized under 7 U.S.C. 2023(a) and these rules;

(vi) Summon and examine witnesses and receive evidence at the hearing;

(vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;

(viii) Admit or exclude evidence;

(ix) Hear oral argument on facts or law;

(x) Upon motion of a party, decide cases, in whole or in part, by non-oral hearing procedures under subpart C of this part where there is no disputed material issue of fact;

(xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(xii) Take all other actions authorized under the Act and these rules, including the extension of time upon motion of a party or *sua sponte* for cause shown.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

§ 283.20 Review by the Judicial Officer.

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under § 283.17(d), consideration of the review petition shall be stayed automatically pending resolution of the motion for reconsideration. If a motion for reconsideration is timely filed, a review petition may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(2) As provided in § 283.15(h), objections made before the ALJ regarding evidence or regarding a limitation on examination or cross-examination or other ruling may be relied upon in a Judicial Officer review.

(3) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(b) *Response to review petition.* Within 30 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(c) *Transmittal of the record.* (1) Whenever a review petition of an ALJ's initial decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal.

(2) Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer.

The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) *Additional evidence.* If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter to the ALJ for consideration of such additional evidence.

(j) *Decision of the Judicial Officer on review.* (1) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(2) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ under this part.

(3) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination and contain a statement describing the right to seek judicial review.

(4) Judicial review must be sought within 30 days of service of the final notice of determination by the Judicial Officer pursuant to 7 U.S.C. 2023(a).

§ 283.21 Ex parte communications.

(a) *ALJ; Judicial Officer.* At no time prior to the issuance of the final decision shall the ALJ or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the ALJ or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(b) *Parties; interested persons.* No party or other interested person shall make or knowingly cause to be made to the ALJ or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(c) *Procedure.* If the ALJ or Judicial Officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the appeal or review:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the ALJ or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded or

otherwise adversely affected on account of such violation.

(d) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

§ 283.22 Form; filing; service; proof of service; computation of time; and extensions of time.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the Hearing Clerk.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g., Motion for Extension of Time).

(3) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(b) *Filing.* Papers are considered filed when they are postmarked, or, received, if hand delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(e) *Computation of time.* (1) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(2) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(f) *Extensions of time.* Requests for extensions of time shall be submitted to the ALJ, Chief Judge or the Judicial Officer prior to the expiration of the original due date. The time for the filing of any document or paper required or authorized under the rules in this part may be extended by the ALJ, Chief Judge or the Judicial Officer, if, in the judgment of the ALJ, Chief Judge or the Judicial Officer, there is cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

§ 283.23 Procedural matters.

(a) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(b) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

§ 283.24 Incorporation of procedures by reference.

Except as otherwise provided, the following procedures detailed in subpart B of this part shall apply to appeals of QC claims of less than $50,000: §§ 283.5 *Motion to Dismiss*; 283.6 *Answer*; 283.8 *Rebuttal or Amendment of Appeal or Answer*; 283.9 *Withdrawal of Appeal*; 283.10 *Consent Decision*; 283.18 *Motions and Requests*; 283.19 *ALJ's*; 283.20 *Review by the*

Judicial Officer; 283.21 *Ex Parte Communications*; 283.22 *Filings; Service; Extensions of Time; and Computations of Time*; and 283.23 *Procedural Matters*.

§ 283.25 Filing appeals for QC claims of less than $50,000.

(a) *Time*. A State agency may appeal the bill for collection from FNS for a QC claim of less than $50,000 for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this section, within 10 days of receipt of the bill for collection from FNS for a QC claim of less than $50,000. The State agency may request an extension to the 10-day filing requirement in accordance with § 283.22(f). FNS shall issue the bill for collection by certified mail or personal service.

(b) *Exhaustion of administrative remedies*. The State agency must appeal the bill for collection to the ALJ, pursuant to this subpart, and exhaust the available administrative remedies before filing suit in the Federal District Courts.

(c) *Filing*. The notice of appeal shall be filed with the Hearing Clerk.

(d) *Content of the notice of appeal*. (1) A notice of appeal, in order to be considered acceptable must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of less than $50,000 identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A true copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal may result in a challenge by FNS to the notice and dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20.

(e) *Receipt of notice of appeal and assignment of docket number*. Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advise that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) That the State agency must file and serve its appeal petition, as set forth in § 283.22 not later than 60 days after receiving a notice of the claim. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection*. The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, interest will accrue on the outstanding claim amount during the stay as provided in section 13(a)(1) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(a)(1)).

(g) *Content of appeal petition*. The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal including a statement as to whether a factual basis for good cause relief exists, and

(2) The nature of the relief sought.

(h) *FNS answer*. Upon service of the State agency appeal petition, FNS shall file an answer, pursuant to § 283.6, not later than 60 days after the State agency submits its appeal petition.

§ 283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.

(a) If, after the filing of its appeal petition, the State agency does not believe that the summary procedure provided in this subpart is adequate for handling the appeal and that an oral hearing is necessary, the State agency may file, no later than the date established for the conclusion of any discovery pursuant to § 283.29, a motion that its appeal be handled under the procedures in subpart B of this part.

(b) The motion shall specify why the State agency believes that the summary procedure is inadequate and what harm will result if an oral hearing is not held.

(c) FNS will have 10 days from service of the State agency's motion that the appeal be handled under subpart B of this part to submit arguments either in support of or against the State agency's position.

(d) The ALJ will review the State agency's motion and the information submitted by FNS and decide which procedures shall be used in the appeal.

§ 283.27 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of the opportunity to file a cross motion for summary judgment pursuant to § 283.30. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 10 days after service of such motion and proposed decision, FNS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.28 Discovery.

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admissions and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with § 283.12(b).

§ 283.29 Scheduling conference.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference following the filing of a notice of appeal pursuant to § 283.25. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the scheduling conference shall be given. The ALJ may order each of the parties to furnish at the scheduling conference the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon;

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Scheduling conference.* At the scheduling conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) Stipulations of facts and of the authenticity, accuracy, and admissibility of documents;

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in § 283.28, must be completed;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for the filing of cross-motions for summary judgment and completion of other actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting*. A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference*. In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order*. Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

§ 283.30 Cross motions for summary judgment.

Appeals filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B of this part in accordance with § 283.26. Cross motions for summary judgment shall be filed by the parties along with the appeal petition and answer or in accordance with the schedule established by the ALJ pursuant to § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties in accordance with the schedule established by the ALJ. Reply briefs may not exceed 15 pages in length, excluding exhibits.

§ 283.31 Review of the record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FNS and the State agency.

(b) If the ALJ decides that additional information or briefing is required from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

(d) If the ALJ decides that oral argument is necessary on legal issues, the ALJ shall set a time for the oral arguments as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The oral arguments shall be held at the U.S. Department of Agriculture, Washington, DC. Upon a showing of unusual or extraordinary circumstances, the ALJ may order that the argument be held at another location. The ALJ shall file a notice stating the time and place of the oral arguments. If any change in the time of the oral arguments is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of the oral arguments and made a part of the transcript or actual notice given to the parties.

(e) Oral argument shall not be transcribed unless so ordered in advance by the ALJ for cause shown upon request of a party or upon the ALJ's own motion.

§ 283.32 ALJ's initial decision.

(a) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency pursuant to § 283.8 or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. The ALJ may extend this deadline for cause shown.

(b) The ALJ shall prepare, upon the basis of the record, and shall file an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(c) Such initial decision shall constitute the final notice of determination for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

PART 284—PROVISION OF A NUTRITION ASSISTANCE PROGRAM FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI) [RESERVED]

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

Sec.

285.1 General purpose and scope.
285.2 Funding.
285.3 Plan of operation.
285.4 Audits.
285.5 Failure to comply.

AUTHORITY: 7 U.S.C. 2011–2036.

SOURCE: Amdt. 209, 47 FR 32409, July 27, 1982, unless otherwise noted.

§ 285.1 General purpose and scope.

This part describes the general terms and conditions under which grant funds shall be provided by the Food and Nutrition Service (FNS) to the government of the Commonwealth of Puerto Rico for the purpose of designing and conducting a nutrition assistance program for needy persons. The Commonwealth of Puerto Rico is authorized to establish eligibility and benefit levels for the nutrition assistance program. In addition, with FNS approval, the Commonwealth of Puerto Rico may employ a small proportion of the grant funds to finance projects that the Commonwealth of Puerto Rico believes likely to improve or stimulate agriculture, food production, and food distribution.

§ 285.2 Funding.

(a) FNS shall, consistent with the plan of operation required by § 285.3 of this part, and subject to availability of funds, provide nutrition assistance grant funds to the Commonwealth of Puerto Rico to cover 100 percent of the expenditures related to food assistance provided to needy persons and 50 percent of the administrative expenses related to the food assistance. The amount of the grant funds provided to the Commonwealth of Puerto Rico shall not exceed amounts appropriated for this purpose for each fiscal year.

(b) FNS shall, subject to the provisions in §§ 285.3 and 285.5 in this part, and limited by the provisions of paragraph (a) of this section, pay to the Commonwealth of Puerto Rico for the applicable fiscal year, the amount estimated by the Commonwealth of Puerto Rico pursuant to § 285.3(b)(4). Payments shall be made no less frequently than on a monthly basis prior to the beginning of each month consistent with the Treasury Fiscal Requirement Manual, Volume I, part 6, section 2030; these letters of credit shall be drawn on an as-needed basis. The amount shall be reduced or increased to the extent of any prior overpayment or underpayment which FNS determines has been made and which has not been previoulsy adjusted. The payment(s) received by the Commonwealth of Puerto Rico for a fiscal year shall not exceed the total authorized for the grant, or the total cost for the nutrition assistance program eligible for funding, whichever is less, for that fiscal year.

(c) FNS may recover from the Commonwealth of Puerto Rico, through offsets to funding during any fiscal year, funds previously paid to the Commonwealth of Puerto Rico and later determined by the Secretary to have been overpayments. Funds which may be recovered include, but are not limited to:

(1) Costs not included in the approved plan of operation;

(2) Unallowable costs discovered in audit or investigation findings;

(3) Funds allocated to the Commonwealth of Puerto Rico which exceeded expenditures during the fiscal year for which the funds were authorized; or

(4) Amounts owed to FNS as a result of the nutrition assistance grant which have been billed to the Commonwealth of Puerto Rico and which the Commonwealth of Puerto Rico has failed to pay without cause acceptable to FNS.

(d) Funds for payment of any prior fiscal year expenditures shall be claimed from the funding for that prior year. The payment of funds shall not exceed the authorization for that prior fiscal year.

[Amdt. 209, 47 FR 32409, July 27, 1982, as amended by Amdt. 243, 49 FR 49585, Dec. 21, 1984; Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 371, 61 FR 60012, Nov. 26, 1996]

§ 285.3 Plan of operation.

(a) To receive payments for any fiscal year the Commonwealth of Puerto Rico shall have a plan of operation for that fiscal year approved by FNS. Each plan of operation shall be sumitted for FNS approval by the July 1 preceding the fiscal year for which the plan of operation is to be effective.

(b) The plan of operation shall include the following information:

(1) Designation of the agency or agencies directly responsible for administration, or supervision of the administration, of the nutrition assistance program.

(2) A description of the needy persons residing in the Commonwealth of Puerto Rico and an assessment of the food and nutrition needs of these persons. The description and assessment shall demonstrate that the nutrition assistance program is directed toward the most needy persons in the Commonwealth of Puerto Rico.

(3) A description of the program for nutrition assistance including:

(i) A general description of the nutrition assistance to be provided the needy persons who will receive assistance, and any agencies designated to provide such assistance; and

(ii) To the extent grant funds are not used for direct nutrition assistance payments to needy persons, the plan of operation must demonstrate that the grants funds will provide nutrition assistance benefiting needy persons in the Commonwealth of Puerto Rico.

(4) A budget and an estimate of the monthly amounts of expenditures necessary for the provision of the nutrition assistance and related administrative expenses up to the monthly amounts provided for payment in § 285.2.

(5) Other reasonably related information which FNS may request.

(6) An agreement signed by the governor or other appropriate official to conduct the nutrition assistance program in accordance with the FNS-approved plan of operation and in compliance with all pertinent Federal rules and regulations. The Commonwealth of Puerto Rico shall also agree to comply with any changes in Federal law and regulations.

(c) Any amendments to those provisions of the plan of operation specified in paragraph (b) of this section, must be submitted to FNS for approval.

(d) FNS shall approve or disapprove any plan of operation no later than August 1 of the year of its submission. FNS approval of the plan of operation shall be based on an assessment that the nutrition assistance program, as defined in the plan of operation, is:

(1) Sufficient to permit analysis and review;

(2) Reasonably targeted to the most needy persons as defined in the plan of operation;

(3) Supported by an assessment of the food and nutrition needs of needy persons;

(4) Reasonable in terms of the funds requested;

(5) Structured to include safeguards to prevent fraud, waste, and abuse in the use of grant funds; and

(6) Consistent with all applicable Federal laws.

(e) FNS shall approve or disapprove any amendments to those provisions of the plan of operation specified in paragraph (b) of this section. If FNS fails either to approve or deny the amendment, or to request additional information within 30 days, the amendment to the plan of operation is approved. If additional information is requested, the Commonwealth of Puerto Rico shall provide this as soon as possible, and FNS shall approve or deny the amendment to the plan of operation. Payment schedules and other program operations may not be altered until an amendment to the plan of operation is

approved. The Commonwealth of Puerto Rico shall, for informational purposes, submit to FNS any amendments to those provisions of the plan of operation not specified in paragraph (b) of this section. Such submittal shall be made at least 30 days prior to the effective date of the amendment. If circumstances warrant a waiver of the 30-day requirement, the Commonwealth of Puerto Rico shall submit a waiver request to FNS for consideration. Should FNS determine that such an amendment relates to the provisions of paragraph (b) of this section, FNS approval as established above will be necessary for the amendment to be implemented.

(f) FNS may approve part of any plan of operation or amendment submitted by the Commonwealth of Puerto Rico contingent on appropriate action by the Commonwealth of Puerto Rico with respect to the problem areas in the plan of operation.

(g) If all or part of the plan of operation is disapproved, FNS shall notify the appropriate agency in the Commonwealth of Puerto Rico of the problem area(s) in the plan of operation and the actions necessary to secure approval.

(h) In accordance with the provisions of § 285.5, funds may be withheld or denied when all or part of a plan of operation is disapproved.

[Amdt. 209, 47 FR 32409, July 27, 1982, as amended by Amdt. 239, 48 FR 23805, May 27, 1983; Amdt. 243, 49 FR 49585, Dec. 21, 1984; Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 371, 61 FR 60012, Nov. 26, 1996]

§ 285.4 Audits.

(a) The Commonwealth of Puerto Rico shall provide an audit of expenditures in compliance with the requirements in part 3015 of this title at least once every two years. The findings of such audit shall be reported to FNS no later than 120 days from the end of each fiscal year in which the audit is made.

(b) Within 120 days of the end of each fiscal year, the Commonwealth of Puerto Rico shall provide FNS with a statement of: (1) Whether the grant funds received for that fiscal year exceeded the valid obligations made that year for which payment is authorized, and if so, by how much, and (2) such additional related information as FNS may require.

[Amdt. 209, 47 FR 32409, July 27, 1982. Redesignated by Amdt. 371, 61 FR 60013, Nov. 26, 1996]

§ 285.5 Failure to comply.

(a) Grant funds may be withheld in whole or in part, or denied if there is a substantial failure by the Commonwealth of Puerto Rico to comply with the requirements of § 285.4, or to bring into compliance a plan of operation disapproved by FNS, or to comply with program requirements detailed in the plan of operation approved for that fiscal year. (For example, funds shall be paid to the Commonwealth of Puerto Rico to cover only the costs of the part or parts of the plan of operation receiving FNS approval. Withheld payments shall be paid when the unapproved part(s) of the plan are modified and approved.) FNS shall notify the Commonwealth of Puerto Rico that further payments shall not be made until FNS is satisfied that there will no longer be any such failure to comply.

(b) Upon a finding of a substantial failure to comply with the requirements of § 285.4 or the plan of operation, FNS may, in addition to or in lieu of actions taken in accordance with paragraph (a) of this section, refer the matter to the Attorney General with a request that injunctive relief be sought from the appropriate district court of the United States to require compliance with these regulations by the Commonwealth of Puerto Rico.

[Amdt. 209, 47 FR 32409, July 27, 1982. Redesignated by Amdt. 371, 61 FR 60013, Nov. 26, 1996]