

Proposed Rules

Federal Register

Vol. 60, No. 7

Wednesday, January 11, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 273 and 274

[Amendment No. 364]

RIN 0584-AB60

Food Stamp Program: Simplification of Program Rules

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes several changes in Food Stamp Program rules relating to social security numbers, combined allotments, residency, excluded resources, contract income, self-employment expenses, certification periods, the notice of adverse action, recertification, and suspension under retrospective budgeting. The changes are being proposed as means to simplify regulatory requirements and to increase consistency with requirements of the Aid to Families with Dependent Children Program.

DATES: Comments must be received on or before March 13, 1995 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305-2454. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305-2496.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

Pursuant to 7 CFR 273.14, State welfare agencies must recertify eligible households whose certification periods have expired. Households are required to submit a recertification form. This rule authorizes State agencies to use a shortened or modified form of the application used for initial certification. The reporting and recordkeeping burden associated with the application, certification and continued eligibility of food stamp applicants is approved by the Office of Management and Budget under OMB No. 0584-0064. OMB approval of the recertification procedures contained in § 273.14 of this proposed action is not necessary because the procedures do not add new or additional requirements on State agencies. In fact, the proposal gives State agencies more flexibility in recertifying households.

The public reporting burden for the collection of information associated with the application, certification and continued eligibility of food stamp applicants is estimated to average .1561 hours per response, including the time

for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of the information collection requirements, including suggestions for reducing the burden, to the Certification Policy Branch, Program Development Division (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for FCS.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

In this rule, the Department proposes to revise Food Stamp Program regulations in response to State agency requests for waivers of Program requirements and suggestions for simplification of rules. In some cases, we are proposing to amend the regulations to incorporate guidance we have already provided to State agencies. In other instances, we are proposing to modify Program rules to provide more

consistency with requirements in the Aid to Families with Dependent Children (AFDC) program. Each proposal is discussed in detail below.

Social Security Numbers for Newborns—7 CFR 273.2(f)(1)(v), 7 CFR 273.6(b)

Current regulations at 7 CFR 273.6(a) require an applicant household to provide the State agency with the social security number (SSN) of each household member. A household member who does not have an SSN must apply for one before he or she can be certified, unless there is good cause for such failure as provided in 7 CFR 273.6(d). If a household member refuses or fails without good cause to apply for an SSN, the individual is ineligible to participate.

Under a program instituted by the Social Security Administration (SSA) called "Enumeration at Birth (EAB)," 45 CFR 205.52, parents of a newborn child may apply for an SSN for the child when the child is born if this service is available at the hospital. When providing information for the child's birth certificate, the parent may request that the child be assigned an SSN and issued an SSN card as part of the birth registration process. The State records that information and subsequently provides enumeration data to SSA in Baltimore via magnetic tape. The time it takes for States to transmit data to SSA varies. However, SSA generally prints and mails cards within 3 days of receipt of the required data.

Most hospitals give parents Form SSA-2853, "Message From Social Security." This receipt form, which describes the EAB process and how long it will take to receive a card, contains the child's name and is signed and dated by a hospital official. It is accepted by State agencies for welfare or other public assistance purposes.

Current program regulations do not address the EAB system. Food and Consumer Service (FCS) regional offices were informed in a memorandum dated July 28, 1989, to instruct State agencies that the Form SSA-2853 (OP4) could be used as verification of application for an SSN if the State agency has other documentation connecting the baby named on the form to the household. We are proposing an amendment to 7 CFR 273.2(f)(1)(v) to reflect that a completed Form SSA-2853 is acceptable as proof of SSN application for an infant. However, the proposed amendment would give State agencies and households more flexibility in this area than the 1989 policy memo granted.

In cases in which a household is unable to provide or apply for an SSN for a newborn baby immediately after the baby's birth, Section 273.6(d) currently allows for good cause exceptions to the SSN requirement. The regulations allow the member without an SSN to participate for one month in addition to the month of application. However, good cause does not include delays due to illness, lack of transportation or temporary absences of that household member from the household, and good cause must be shown monthly in order for the household member to continue to participate.

Several State agencies have requested and been granted waivers to allow households up to four months following the month in which a baby is born to apply for an SSN for a newborn. In justifying the need for a waiver, the State agencies cited the difficulty some households experience in obtaining a certified copy of the birth certificate needed to apply for an SSN.

To avoid a delay in adding a new member to the household, we propose to amend 7 CFR 273.6(b) to provide that, in cases in which a household is unable to provide or apply for an SSN for a newborn baby immediately after the baby's birth, a household may provide proof of application for an SSN for a newborn infant at its next recertification. If the household is unable to provide an SSN or proof of application at its next recertification, the State agency shall determine if the good cause provisions of 7 CFR 273.6(d) are applicable.

Combined Allotments—7 CFR 273.2(i) and 274.2(b)

Current regulations at 7 CFR 274.2(b)(3) provide for the issuance of a combined allotment (prorated benefits for the application month and full benefits for the subsequent month) for eligible households applying after the 15th of the month that qualify for expedited service. The regulations require that to receive the combined allotment, a household must supply all required verification within the 5-day expedited service timeframe. If the household does not supply all required verification within the expedited service timeframe, the household receives a prorated amount for the initial month issued within 5 days of application (with waived verification, if necessary, to meet the expedited timeframe) and a second allotment for the subsequent month issued after all necessary verification has been obtained.

On March 31, 1992, the U.S. District Court for the Northern District of

Georgia ruled against USDA in *Johnson v. USDA and Madigan*. This case concerned combined allotments for expedited service. The Court agreed with the plaintiffs that Section 8(c)(3)(B) of the Food Stamp Act, 7 U.S.C. 2017(c)(3)(B), requires that if an eligible household applies for food stamps after the fifteenth of the month and is entitled to expedited service, it must receive the prorated initial month's allotment and the full allotment for the second month within the expedited timeframe. In such a case, any additional requirements would be postponed until the end of the second month.

In light of the District Court's decision, the Department chose to alter national food stamp policy regarding combined allotments. On June 16, 1993, the Department issued a policy memorandum to its regional Food Stamp Program directors informing them of the change in policy. The regional directors were instructed to inform the State agencies in their regions of the change. The Department is proposing in this rule to incorporate the provisions of the policy memorandum into the Food Stamp Program's regulations.

Currently, the regulations regarding combined allotments are contained at 7 CFR 274.2(b) (2), (3), and (4). In order to simplify these regulations, the Department is proposing to move the combined allotments requirements out of 7 CFR 274.2(b) and into 7 CFR 273.2(i). In 7 CFR 274.2, the Department is proposing to delete paragraphs (b) (2), (3), and (4), and redesignate paragraphs (b)(1), (c), (d), and (e) as paragraphs (b), (d), (e), and (f), respectively. The Department is proposing to add two sentences to the end of redesignated paragraph (b) which will contain the requirements for issuing benefits to expedited service households. The Department is also proposing to add a new paragraph (c) which will reference the combined allotment regulations at 7 CFR 273.2(i). In 7 CFR 273.2(i)(4)(iii), the Department is proposing to revise paragraph (C), and to add two new paragraphs, (D) and (E). 7 CFR 273.2(i)(4)(iii)(C) will include the requirements currently contained at 7 CFR 274.2(b)(2), which concern combined issuance for households certified under normal processing timeframes. 7 CFR 273.2(i)(4)(iii)(D) shall contain the new requirement that a household which applies after the 15th of the month and is processed under expedited service procedures shall be issued a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation.

In these cases, any unsatisfied verification requirement would be postponed until the end of the second month. 7 CFR 273.2(i)(4)(iii)(E) shall include the requirements currently contained at 7 CFR 274.2(b)(4), which concern households not entitled to combined allotments.

The regulations at 7 CFR 273.2(i)(4)(iii)(B) currently require that households which apply after the fifteenth of the month and are assigned certification periods of longer than one month, must have all postponed verification completed before it can be issued its second month's benefits. Migrant households which apply after the fifteenth of the month and are assigned certification periods of longer than one month must provide all postponed verification from within-State sources before the second month's benefits can be issued, and must provide all postponed verification from out-of-State sources before the third month's benefits are issued. Because of the change in policy regarding combined allotments, eligible households that are entitled to expedited service and apply after the 15th of the month must now receive a combined allotment which includes their first and second month's benefits. Since these households will have already received their second month's benefits, postponed verification must now be completed prior to the third month of benefits. As noted above, this is current policy for migrants in regard to completing out-of-State verification, and the Department is proposing to broaden the requirement to make it mandatory for all households which apply after the fifteenth of the month and are assigned certification periods of longer than one month. Therefore, the Department is proposing to amend 7 CFR 273.2(i)(4)(iii)(B) accordingly. The Department is also proposing to make a conforming amendment to 7 CFR 273.10(a)(1)(iv), which contains a similar verification requirement to that currently contained in 7 CFR 273.2(i)(4)(iii)(B).

Current regulations at 7 CFR 273.2(i)(4)(iii)(B) require that when households which apply for benefits after the 15th of the month provide the required postponed verification, the State agency shall issue the second month's benefits within five working days from receipt of the verification or the first day of the second calendar month, whichever is later. The Department is proposing to remove this requirement.

Current regulations at 7 CFR 273.2(i)(4)(iii)(C) require that households which are eligible for

expedited service and that apply after the fifteenth of the month must be issued their second month's benefits on the first working day of the second calendar month, not the day benefits would normally be issued in a State using staggered issuance. Because of the potentially lengthy period of time between issuance of the combined allotment for the month of expedited service and the first full month of participation and issuance of a second allotment for the third month of participation if benefits are issued to the household in a State using staggered issuance, the Department has decided to retain the issuance requirement of 7 CFR 273.2(i)(4)(iii)(C) for the third month of benefits. Therefore, the Department is proposing to add a new paragraph 7 CFR 273.2(i)(4)(iii)(F) which will require that in States with staggered issuance, households be issued their third allotment by the first working day of the third calendar month. For allotments in subsequent months, State agencies will employ their normal issuance mechanisms.

Current regulations at 7 CFR 273.2(i)(4)(i)(B) require that households entitled to expedited service furnish a social security number (SSN) for each household member before the first full month of participation. Households that are unable to provide the required SSNs or who do not have one prior to the first full month of participation can only participate if they satisfy the good cause requirements with respect to SSNs specified in 7 CFR 273.6(d).

Because of the change in combined allotment policy, eligible households that apply after the fifteenth of the month and are entitled to expedited service can receive their second month's benefits without having to furnish an SSN. The Department is proposing to revise the regulations at 7 CFR 273.2(i)(4)(i)(B) to require that households entitled to expedited service that apply after the fifteenth of the month furnish an SSN for each person prior to the third month of participation.

Current regulations at 7 CFR 273.2(i)(4)(iii) provide that households that are certified for expedited service and have postponed verification requirements may be certified for either the month of application or for longer periods, at the State agency's option. 7 CFR 273.2(i)(4)(iii)(A) currently addresses verification requirements for households that are certified only for the month of application, and 7 CFR 273.2(i)(4)(iii)(B) currently addresses verification requirements for households that are certified for longer than the month of application. Neither section of the regulations addresses

verification requirements for households that apply before the 15th of the month. The Department is proposing to eliminate this deficiency by amending 7 CFR 273.2(i)(4)(iii)(A) to address verification requirements for households that apply on or before the 15th of the month and to amend 7 CFR 273.2(i)(4)(iii)(B) to address verification requirements for households that apply after the 15th of the month.

Current regulations at 7 CFR 273.2(i)(4)(iii) give State agencies the option of requesting any household eligible for expedited service which applies after the 15th of the month to submit a second application (at the time of initial certification) if the household's verification requirements have been postponed. Under current policy, that second application would be denied for the first month and acted on for the second month. However, now that expedited service households will be receiving a combined allotment of their first and second month's benefits, under our proposal, the second application would be denied for both the first and second months and acted on for the third month. The Department believes that current regulations do not allow for this procedure and is, therefore, proposing to amend the regulations at 7 CFR 273.10(a)(2)(i) to require that if a household files an application for recertification in any month in which it is receiving food stamp benefits, the State agency shall act on that application for eligibility and benefit purposes starting with the first month after the current certification period expires.

Residency—7 CFR 273.3

Current rules at 7 CFR 273.3 require food stamp households to live in the project area in which they apply unless the State agency has made arrangements for particular households to apply in nearby specified project areas. A proposed rule on Consistency for Food Stamp Program, Aid to Families with Dependent Children, and Adult Assistance Programs (the Consistency rule), published September 29, 1987, at 52 FR 36549, would have permitted State agencies to allow Statewide residency. The change was proposed to increase consistency with requirements of the AFDC and the Adult Assistance programs under Titles I, X, XIV, and XVI of the Social Security Act, which require that applicants reside in the State, but have no project area requirement. Under that proposed rule, State agencies would still have been able to designate limited project areas and restrict where a given household could apply. That proposed rule was not

published as a final rulemaking because of the initiation of a broader AFDC/food stamp consistency effort. However, in the interest of Program simplification, the Department has decided to repropose the provision. We are proposing, therefore, to amend 7 CFR 273.3 to give State agencies the option of permitting households to live anywhere in the State rather than in the project area in which they apply for benefits.

Comments received on this provision of the proposed Consistency rule were favorable. One commenter did ask, however, that State agencies which continue to require an applicant to apply in a particular project area office be required to forward the application from an "incorrect" office to a "correct" receiving office. The regulations at 7 CFR 273.2(c)(2)(ii) provide that if a household files an application at the incorrect office within a project area, the State agency shall forward the application to the correct office the same day. The application processing timeframes begin when the correct office receives the application. This provision of 273.2(c)(2)(ii) would continue to apply to State agencies which require applicants to apply in a particular project area. We are proposing, however, to add a new paragraph (iii) to 7 CFR 273.2(c)(2) to address application processing timeframes in States which opt to allow Statewide residency. If a State agency does not require that households apply in specified project areas, the application processing timeframes would begin the day the application is received by any office.

The Department is also proposing to make a second amendment to 7 CFR 273.3 to clarify the requirements for transferring food stamp cases between project areas. Several commenters on the Consistency rule requested this clarification. The Department is proposing to amend 7 CFR 273.3 to state that when a household moves within a State, the State agency may either require the household to reapply in the new project area or transfer the case from the previous project area to the new one and continue the household's certification without requiring a new application. If the State agency chooses to transfer the case, it must act on changes in the household circumstances resulting from the move in accordance with 7 CFR 273.12(c) or 7 CFR 273.21. The State agency must also ensure that potential client abuse of case transfers from project area to project area is identifiable through the State agency's system of duplicate participation checks required by 7 CFR 272.4(f). Finally, the

State agency must develop transfer procedures to guarantee that the transfer of a case from one project area to another does not affect the household adversely. These proposed requirements are consistent with the requirements for transferring cases between project areas stated in Policy Interpretation Response System (PIRS) Category 3 Policy Memo 3-91-03 issued December 17, 1990.

Funeral Agreements—7 CFR 273.8(e)(2)

Regulations at 7 CFR 273.8(e)(2) exclude the value of one burial plot per household member from resource consideration. Questions have arisen concerning the treatment of pre-paid funeral agreements. In the Consistency rule, we proposed to adopt a funeral agreement policy similar to that of the AFDC program. AFDC regulations at 45 CFR 233.20(a)(3)(i)(4) exclude from resource consideration "bona fide funeral agreements (as defined and within limits specified in the State plan) of up to a total of \$1,500 of equity value or a lower limit specified in the State plan for each member of the assistance unit." We proposed in the Consistency rule to amend 7 CFR 273.8(e) to allow for an exemption from resource consideration of up to \$1,500 for bona fide, pre-paid funeral agreements that are accessible to the household. Funeral agreements that are inaccessible to a household were not affected by the proposed rule, as they are excluded from resource consideration under the provisions of 7 CFR 273.8(e)(8).

There were 26 comments on the funeral agreement provision in the proposed rule. Many commenters mistakenly thought that the proposed provision would limit the exclusion of inaccessible funeral agreements to a maximum of \$1,500. Others believed the \$1,500 limit on the exclusion of funds in accessible funeral agreements should be either raised or removed.

In this rule, the Department is again proposing the funeral agreement exclusion. We are retaining the \$1,500 limit on the exclusion in order to remain consistent with AFDC and to lessen the likelihood of abuse of the exemption. Therefore, the Department is proposing to amend 7 CFR 273.8(e)(2) to exclude as a resource the value of one bona fide funeral agreement up to \$1,500 in equity value per household member.

Determining Income—7 CFR 273.10(c)(2)

Current regulations at 7 CFR 273.10(c)(2)(iii) provide that households receiving Federal assistance payments (PA) or State general assistance (GA), Supplemental Security Income (SSI), or

Old-Age, Survivors, and Disability Insurance (OASDI) benefits on a recurring monthly basis shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one month and none in the next month.

There are other instances in which a household may receive a disproportionate share of a regular stream of income in a particular month. For example, an employer may issue checks early because the normal payday falls on a weekend or holiday. We have granted waivers to several State agencies to allow income such as State employment checks received monthly or twice a month to be counted in the month the income is intended to cover rather than the month in which it is received.

We are proposing to amend 7 CFR 273.10(c)(2)(iii) to specify that income received monthly or semimonthly (twice a month, not every two weeks) shall be counted in the month it is intended to cover rather than the month in which it is received when an extra check is received in one month because of changes in pay dates for reasons such as weekends or holidays.

Contract Income—7 CFR 273.10(c)(3)(ii)

Section 5(f)(1)(A) of the Food Stamp Act, 7 U.S.C. 2014(f)(1)(A), provides that households which derive their annual income (income intended to meet the household's needs for the whole year) from contract or self-employment shall have the income averaged over 12 months. Current regulations at 273.10(c)(3)(ii) implement this provision of the Act, stating that "[h]ouseholds 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." The regulations at 7 CFR 273.11(a)(1)(iii) address how self-employment income which is not a household's annual income and is intended to meet the household's needs for only part of the year should be handled. 7 CFR 273.11(a)(1)(iii) provides that "[s]elf-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover." The regulations, however, fail to specify how contract income which is not a household's annual income and is intended to meet the household's needs for only part of the year should be handled. This omission in the regulations has been

brought to our attention in several waiver requests from State agencies. We are taking action to rectify this deficiency in the regulations by proposing to amend 7 CFR 273.10(c)(3)(ii) to clarify that contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be averaged over the period the income is intended to cover.

Certification Periods—7 CFR 273.10(f)

In October 1991, the Department solicited suggestions from State agencies for simplifying the recertification process. Several State agencies recommended changes in the requirements for certification periods to allow more flexibility in aligning the food stamp recertification and the PA/GA redetermination in joint cases. We have granted waivers to State agencies to facilitate matching the PA/GA and food stamp periods, including extension of food stamp certification periods for up to 16 months.

Alignment of the food stamp recertification with the PA/GA redetermination has long been a problem for State agencies. Section 3(c) of the Food Stamp Act, 7 U.S.C. 2012(c), requires that the food stamp certification period of a GA or PA household coincide with the period for which the household is certified for GA or PA. However, because PA/GA and Food Stamp Program processing standards and the period for which benefits must be provided are not the same, it is often difficult to get the certification periods for the programs to coincide.

Some State agencies have requested that the Food Stamp Program return to the policy of open-ended certification periods which existed prior to the Food Stamp Act of 1977 so that the food stamp portion of the case may be recertified at the same time as the PA/GA redetermination. Section 11(e)(4) of the Act, 7 U.S.C. 2020(e)(4), however, requires that households be assigned definite certification periods and thus precludes the use of open-ended certification periods. It is also clear in the legislative history of the Act that Congress intended for households participating in the Food Stamp Program to be subject to distinct certification periods. The House of Representatives Report No. 464, 95th Cong., 1st Sess. (August 10, 1977), states on page 277 that “* * * in no event should [the mandate that the food stamp certification period be identical to the PA eligibility period] lead to food stamp eligibility for public assistance recipients being a perpetual entitlement

as their assistance might be instead of being subject to distinct entitlements marked off by certification period[s] * * *” We feel, therefore, that the intent of the Act clearly prohibits us from returning to open-ended certification periods.

We are proposing, however, three alternative means of assisting State agencies in aligning PA/GA and food stamp certification periods. First, we are proposing to amend 7 CFR 273.10(f)(3) to allow the following procedure: When a household is certified for food stamp eligibility prior to an initial determination of eligibility for PA/GA, the State agency shall assign the household a food stamp certification period consistent with the household's circumstances. When the PA/GA is approved, the State agency shall reevaluate the household's food stamp eligibility. The household will not be required to submit a new application or undergo another face-to-face interview. If eligibility factors remain the same, the food stamp certification period can be extended up to an additional 12 months to align the household's food stamp recertification with its PA/GA redetermination. The State agency will be required to send a notice informing a household of any such changes in its certification period. At the end of the extended certification period the household must be sent a Notice of Expiration and must be recertified before being determined eligible for further food stamp assistance, even if the PA/GA redetermination has not been completed. In the event that a household's PA/GA redetermination is not completed at the end of the food stamp certification period and, as a result, the household's food stamp and PA/GA certification periods are no longer aligned, the State agency may employ the procedure described above to once again align those certification periods.

Our second proposal for aiding State agencies in aligning PA/GA and food stamp certification periods is to allow State agencies to recertify a household currently receiving food stamps when the household comes into a State office to report a change in circumstances for PA/GA purposes. At that time, the State agency would require the household to fill out an application for food stamps and to undergo a face-to-face interview. If the household is determined eligible to continue receiving food stamps, its current certification period would end and a new one would be assigned.

Our third proposal for aiding State agencies in aligning PA/GA and food stamp certification periods would allow

State agencies to assign indeterminate certification periods to households certified for both food stamps and PA/GA. Under this proposal, a household's food stamp certification period would be set to expire one month after the household's scheduled PA/GA redetermination, so long as the period of food stamp certification did not exceed 12 months. Therefore, if a food stamp certification were set to expire in seven months, that being the month after the month the PA redetermination was due, but the PA redetermination was not done on time, the food stamp certification period could be postponed up to an additional five months to align food stamp recertification and PA/GA redetermination. In the twelfth month, the household would have to be recertified for food stamp purposes, even if the PA redetermination had not yet been completed.

The Department is proposing to amend 7 CFR 273.10(f)(3) to permit State agencies to implement the three above-described procedures.

Calculating Boarder Income—7 CFR 273.11(b)

Current rules at 7 CFR 273.11(b) provide that State agencies must use the maximum food stamp allotment as a basis of establishing the cost of doing business for income received from boarders when the household does not own a commercial boardinghouse. Boarders are not included as members of the household to which they are paying room and board. The households receiving the room and board payments must include those payments as self-employment income, but can exclude that portion of the payments equal to the cost of doing business. The rules provide that the cost of doing business is either (1) the maximum food stamp allotment for a household size equal to the number of boarders; or (2) the actual documented cost of providing room and meals, if that cost exceeds the maximum allotment. The Department is proposing to revise current regulations to provide State agencies with an additional option for calculating border income.

The Consistency rule included a provision that would have required State agencies to use, in place of the maximum allotment method, a flat percentage equal to 75 percent of the boarder-generated income as the means of establishing the cost of doing business for income received from boarders. The proposal allowed the household to use actual expenses if it could verify that its actual expenses were higher than the flat percentage. This is currently the policy of the AFDC

program as indicated in 45 CFR 233.20(a)(6)(v)(B).

There were only a few comments received on this proposal in the Consistency rule. The majority opposed the proposal, arguing that use of the fixed percentage would further burden households by requiring them to document all their actual expenses or face the possibility of overstating the income they receive from boarders.

Several State agencies have obtained waivers to allow use of a flat percentage to calculate allowable costs of doing business for households with boarders. It is our understanding that other State agencies prefer the maximum allotment method.

In this rule, we are proposing to add a new paragraph, 7 CFR 273.11(b)(1)(ii)(C), to give State agencies the option of using actual costs, the maximum allotment for a household size equal to the number of boarders, a flat amount, or a percentage of income from boarders to determine the cost of doing business of households with boarders. Households must be given the opportunity to claim actual costs. We are not proposing a percentage limit at this time. Current waivers specify 75 percent, 60 percent, or the limit used in the State's AFDC program. We are seeking comments concerning an appropriate percentage.

Day Care Providers—§ 273.11(b)(2)

The Department is also proposing to allow households who are day care providers to use a standard per individual amount as a cost of doing business. Under current regulations, at 7 CFR 273.11(a)(4)(i), households which provide in-home day care can claim the cost of meals fed to individuals in their care as a cost of doing business, provided they can document the cost of each meal. Several State agencies have obtained waivers to use a flat dollar amount, such as \$5 a day, or to use the FCS Child and Adult Care Food Program reimbursement rates, which are updated annually to reflect the cost of meals as specified in 7 CFR 26.4(g).

We believe use of a standard reimbursement rate for the cost of providing day care would eliminate the burden on day care providers to document itemized costs incurred for producing the income and would increase the benefits for households that fail to adequately document business costs. Use of a standard would also decrease the amount of time needed to process these self-employment cases and reduce payment errors. Therefore, we are proposing to amend 7 CFR 273.11(b) to add a new paragraph, (2), to allow use of a standard amount for

determining the self-employment expenses of households providing day care. State agencies would be required to inform households of their opportunity to verify actual meal expenses and use actual costs if higher than the fixed amount. When establishing a standard amount, State agencies should take into account the differences in cost for full-day and part-day care. Households that are reimbursed for the cost of meals fed to individuals in their care, for example through the FCS Child and Adult Care Food Program, cannot claim the standard but may claim actual expenses that exceed the amount of their reimbursement.

Exemption From Providing a Notice of Adverse Action—7 CFR 273.13(b)

Current regulations at 7 CFR 273.13(a) require State agencies to send a notice of adverse action (NOAA) to a household prior to any action to reduce or terminate the household's benefits, except as provided in 7 CFR 273.13(b). That section does not include an exception to the NOAA requirements when mail sent to a household is returned with no known forwarding address. The AFDC regulations at 45 CFR 205.10(a)(4)(ii) do not require a notice of adverse action in this situation. In the Consistency rule, the Department proposed to add an exemption from sending an NOAA if agency mail is returned with no known forwarding address. Since it is unlikely that the Postal Service can deliver a NOAA mailed to an address which is no longer correct, it is reasonable to specify in regulations that no notice is required if delivery cannot be reasonably expected.

Few comments were received on this proposal and most were favorable. Therefore, the Department is reproposing the amendment to 7 CFR 273.13(b) to provide that no NOAA is required if the household's mail has been returned with no known forwarding address.

Recertification—7 CFR 273.14

Background. Over the years, the Department has become aware, through State agency waiver requests and other means, of the need to simplify the food stamp recertification process. The need for simplification has become especially important in this time of tight budgetary constraints and of increased demand on the time of State eligibility workers. In this rule, the Department is proposing to simplify recertification procedures in several areas.

State agencies have requested more flexibility in developing recertification

procedures. We understand the need of State agencies to be able to adopt procedures that are consistent with those of other programs and which can be administered in conjunction with computerized systems. However, the Department is limited in the extent to which it can give State agencies more flexibility because of the provisions of the Food Stamp Act. There are two main provisions in the Act that govern the timeframes for recertification. Section 11(e)(4), 7 U.S.C. 2020(e)(4), provides that each participating household must receive a notice of expiration of its certification prior to the start of the last month of its certification period. That section of the Act also provides that a household which files an application no later than 15 days prior to the end of the certification period shall, if found to be still eligible, receive its allotment no later than one month after the receipt of the last allotment. Section 11(e)(4) allows modification of the timeframes for monthly reporting households.

We are proposing changes to the recertification process that will provide State agencies with more flexibility and at the same time retain the right of a household to receive uninterrupted benefits if it applies by the filing deadline and meets interview and verification requirements within the required timeframes. In exchange for the increased flexibility, State agencies would be responsible for providing households sufficient notice and time to comply with application, interview, and verification requirements. The proposed changes are discussed below.

In accordance with § 273.14(a) of the current regulations, households that meet all eligibility requirements must have their recertifications approved or denied by the end of their current certification period and, if recertified, be provided uninterrupted benefits. The regulations give State agencies two options for handling the cases of households who do not provide verification or attend an interview as required for recertification. The State agency may either deny the household's application at the end of the current certification period or within 30 days after the date the application was filed. State agencies also have the option of establishing verification timeframes. A household which does not meet all the verification requirements within required timeframes loses its right to uninterrupted benefits but can receive benefits within 30 days after the date the application was filed. These requirements are stated in 7 CFR 273.14(c) and (d). State agencies have found these procedures confusing and have requested that they be simplified.

In this rulemaking we are proposing to reorganize the recertification section in an attempt to provide a clearer expression of the requirements. The proposed revision of 7 CFR 273.14(a) contains general introductory statements regarding actions the household and the State agency must take to ensure that eligible households receive uninterrupted benefits. We propose to include in revised 7 CFR 273.14(b) requirements for the notice of expiration, the recertification form, the interview and verification. In revised 7 CFR 273.14(c), we propose to include the filing deadlines for timely applications for recertification. These and other revisions are discussed below.

1. Recertification Process

a. Notice of expiration (NOE). Several State agencies have requested that we reduce the mandated content of the NOE. Under current regulations at 7 CFR 273.14(b)(3), the following information is required in the NOE:

- (1) The date the current certification period ends;
- (2) The date by which the household must file an application for recertification to receive uninterrupted benefits;
- (3) Notice that the household must appear for an interview, which will be scheduled on or after the date the application is timely filed in order to receive uninterrupted benefits;
- (4) Notice that the household is responsible for rescheduling a missed interview;
- (5) Notice that the household must complete the interview and provide all required verification in order to receive uninterrupted benefits;
- (6) Notice of the number of days the household has for submitting missing verification;
- (7) Notice of the household's right to request an application and have the State agency accept an application as long as it is signed and contains a legible name and address;
- (8) The address of the office where the application must be filed;
- (9) Notice of the consequences of failure to comply with the notice of expiration;
- (10) Notice of the household's right to file the application by mail or through an authorized representative;
- (11) Notice of the household's right to request a fair hearing; and
- (12) Notice of the fact 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.

We have reviewed the requirements for the NOE and have determined that none of the requirements in the current rule can be eliminated because they are required either by the provisions of the Act or judicial orders. Therefore, we have retained all of the current

recertification requirements in the proposed revised section 273.14(b)(1).

b. *Recertification form.* In response to our request for ideas for simplifying the recertification process, several State agencies suggested that we develop a short recertification form to be used in conjunction with current case file information. Several State agencies have requested and been granted waivers to allow use of a modified application form for recertification. The forms developed by the State agencies do not require households to provide information which is already available in the case file.

This rule proposes to revise 7 CFR 273.14(b)(2) to allow State agencies to use a modified application form for recertifying households. This form could only be used for those households which apply for recertification before the end of their current certification period. FCS does not plan to develop a model recertification form, so individual State agencies must devise this form themselves. However, because Section 11(e)(2) of the Act, 7 U.S.C. 2020(e)(2), requires that the Department approve all deviations from the uniform national food stamp application, all State agency-designed recertification applications must be approved by FCS before the forms can be used.

To allow State agencies as much flexibility as possible in the design of their modified recertification forms, we are not specifying the exact questions that must be asked. The State agency should design an application that suits its own needs, whether it be a short form on which the household notes changes since its last certification, or a computer printout of household circumstances annotated by the caseworker, or some other type of form. Whichever type of form the State agency chooses to use, it must be able to obtain from that form, or have available in the case record, all information concerning household composition, income and resources needed to redetermine eligibility and the correct benefit amount for the first month of the new certification period. However, while we are not specifying questions that must be on the forms, we would require that all recertification forms include the information required by 7 CFR 273.2(b)(1) (i), (ii), (iii), (iv) and (v). This information is required by Section 11(e)(2) of the Act, 7 U.S.C. 2020(e)(2), and apprises applicants of their rights and responsibilities under the Program. The information regarding the Income and Eligibility Verification System in 7 CFR 273.2(b)(2) may be provided on a separate form.

c. *Interviews.* Under current regulations, State agencies are required to conduct face-to-face interviews with households applying for recertification. Several State agencies suggested that we modify the requirement that all households have face-to-face interviews. Some State agencies suggested eliminating the face-to-face interview entirely or reserve the office interview for those households that do not have telephones. Other State agencies indicated that case workers should be allowed to decide on a case-by-case basis which households should be interviewed. Other suggestions included eliminating the interview requirement entirely for households that are not error-prone, eliminating recertification interviews unless there is questionable information that cannot be resolved in any other manner, and giving State agencies the option of not interviewing households receiving AFDC if they are not due for an AFDC redetermination.

We consider the face-to-face interview to be an important source of information about household circumstances. However, we have granted waivers on a State-by-State basis to substitute a telephone interview for the face-to-face interview for households with very stable circumstances, such as households in which all members are elderly or disabled and have no earned income. In an effort to be responsive to State agency requests for simplification and flexibility, we are proposing to revise 7 CFR 273.14(b)(3) to allow telephone interviews in place of face-to-face interviews at recertification for some categories of households. We are not allowing State agencies to substitute telephone interviews for face-to-face interviews on a case-by-case basis. Section 11(e)(2), 7 U.S.C. 2020(e)(2), currently provides for the waiver of the face-to-face interview on a case-by-case basis for those households for whom a visit to the food stamp office would be a hardship. We feel, however, that to allow caseworkers the option of waiving a face-to-face interview for any household based only on that caseworker's personal determination that a face-to-face interview is not needed may compromise the right to equal treatment guaranteed all food stamp recipients under Section 11(c) of the Act, 7 U.S.C. 2020(c).

We are proposing to revise 7 CFR 273.14(b)(3) to allow State agencies to interview by telephone any household that has no earned income and whose members are all elderly or disabled. We are also proposing to give State agencies the option of conducting a face-to-face interview only once a year with a food stamp household that receives PA or

GA. The interview could be conducted at the same time the household is scheduled for its PA or GA face-to-face interview. At any other recertification during that time period, the State agency may choose to interview the household by telephone. However, the State agency would be required to grant a face-to-face interview to any household that requests one.

Several State agencies suggested that group interviews or videotapes be used whenever possible to cover areas of the recertification process common to all recipients. Current regulations do not prohibit the use of group interviews for informing households about the Program and Program rights and responsibilities. However, a certification worker must obtain information about specific household circumstances in a setting which guarantees confidentiality and privacy, as required by 7 CFR 273.2(e)(1).

d. *Verification.* Current regulations at 7 CFR 273.14(c)(3) give State agencies the option of establishing timeframes for submission of verification information. To increase consistency with procedures for initial applications and provide sufficient time for households to obtain the required verification information, we are proposing to revise 7 CFR 273.14(b) to add a new paragraph (4) to require State agencies to allow households a minimum of 10 days in which to satisfy verification requirements.

Current regulations at 7 CFR 273.2(f)(8)(i) require State agencies to verify at recertification a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25, and previously unreported medical expenses and total recurring medical expenses which have changed by \$25 or more. 7 CFR 273.2(f)(8)(i) also requires that State agencies not verify income, 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." Several State agencies have requested that we simplify verification requirements at recertification by requiring them to only reverify information that is questionable, rather than information that is "incomplete, inaccurate, inconsistent or outdated." The Department does not see that there is any substantive difference between the terms "incomplete, inaccurate, inconsistent or outdated" and the term "questionable." Presumably, State agency caseworkers would consider questionable any information that is incomplete, inaccurate, inconsistent, or

outdated. Therefore, if replacing the words "incomplete, inaccurate, inconsistent, or outdated" with the word "questionable" will simplify Program administration for State agencies, we see no objection to doing so. We are proposing, therefore, to amend 7 CFR 273.2(f)(8)(i)(A) and (C), and (ii) to replace the terms "incomplete, inaccurate, inconsistent or outdated" with the term "questionable."

e. *Filing deadline.* Currently, 7 CFR 273.14(c)(1) provides that for monthly reporting households the deadline for filing an application for recertification is the normal date for filing a monthly report. Several State agencies have requested that, for the purpose of administrative efficiency and flexibility, the Department make the filing deadline for monthly reporters the 15th of the last month of the household's certification period (recertification month), the same as it is for nonmonthly reporting households.

We are proposing to revise 7 CFR 273.14(c) to give State agencies the option of making the filing deadline for monthly reporters either the 15th of the recertification month or the household's normal date for filing a monthly report.

2. Timely Processing

Current regulations at 7 CFR 273.14(d) provide that the State agency shall act to provide uninterrupted benefits to any household determined eligible after the household timely filed an application, attended an interview, and submitted all necessary verification information. Action to approve or deny a recertification application must be taken by the end of the certification period if the household has met all required application procedures. Households which are certified for one month or are in the second month of a two-month certification period must receive benefits within 30 days of their last issuance. Other households must receive benefits in their normal issuance cycle if they have met all processing requirements. If verification requirements are unsatisfied at the end of the recertification month, the State agency must provide benefits within five working days after the household supplies the missing verification information. If the State agency is at fault for delaying the household's benefits, it must provide benefits as soon as the household is determined eligible. Current regulations at 7 CFR 273.14(e) provide that eligible households which have complied with all requirements are entitled to restored benefits if the State agency does not provide benefits in the first month of the new certification period.

7 CFR 273.14(f)(1) currently addresses failure of the household to appear for an interview or provide verification information as required. 7 CFR 273.14(f)(2) provides requirements for households that do not file a timely application.

To clarify recertification requirements that address a variety of situations that may occur in application processing, we are proposing to reorganize sections 7 CFR 273.14(d), (e), and (f) into two new sections 7 CFR 273.14(d) and (e). New section 7 CFR 273.14(d) would combine all of the provisions of the previous sections relating to timeframes for providing benefits when all processing deadlines are met. New section 7 CFR 273.14(e) would address situations in which the household or the State agency fail to meet processing deadlines.

3. Delayed Processing

We are proposing to include in new section 273.14(e) requirements for providing benefits when delays in application processing occur. Section 273.14(e)(1) will address delays caused by the State agency, and section 273.14(e)(2) will address delays caused by the household.

We are also proposing a change in provisions for handling the recertification of households which do not comply with the requirements for interviews or verification. Under current regulations at 7 CFR 273.14(a)(3), a State agency may deny a household's application for recertification at the time a household's certification period expires or within 30 days after the date the application was filed as long as the household has had adequate time to satisfy verification requirements. Under current regulations at 7 CFR 273.14(a)(2), a household that fails to attend a scheduled interview or to provide required verification information within required timeframes loses its right to uninterrupted benefits but cannot be denied eligibility at that time, unless the household fails to cooperate or the household's certification period has elapsed.

To increase consistency with AFDC procedures and provide maximum flexibility to State agencies, we are proposing to include in revised section 7 CFR 273.14(e) a provision to allow State agencies the option of denying eligibility to households as soon as a failure to comply with the interview or verification requirement occurs. The State agency would be required to send the household a denial notice informing it that its application for recertification has been denied. The notice would have to contain the reason for the denial, the action required to continue

participation, the date by which it must be accomplished, the consequences of failure to comply, notification that the household's participation will be reinstated if it complies within 30 days after its application for recertification was filed and is found eligible, and that the household has a right to a fair hearing. If the household subsequently requests an interview or provides the required verification information within 30 days of the date of its recertification application and is found eligible, the State agency must reinstate the household. Under this option, benefits must be provided within 30 days after the application for recertification was filed or within 10 days of the date the household provided the required verification information or completed the interview, whichever is later.

Current regulations at 273.14(f)(2) provide that any application not submitted in a timely manner shall be treated as an application for initial certification, except for verification requirements. If the household does not submit a recertification form before its certification period expires, the household's benefits for the first month of the new certification period are prorated in accordance with 7 CFR 273.10(a)(2). However, Section 13916 of the 1993 Leland Act amended Section 8(c)(2)(B) of the Act, 7 U.S.C. 2017(c)(2)(B), to eliminate proration of first month's benefits if a household is recertified for food stamps after a break in participation of less than one month. Therefore, if a household submits an application for recertification after its certification period has expired, but before the end of the month after expiration, the application is not considered an initial application and the household's benefits for that first month are not prorated. We are proposing to include this new provision in revised section 7 CFR 273.14(e)(2)(ii).

4. Expedited Service

Section 11(e)(2) of the Act, 7 U.S.C. 2020(e)(2), states that when a household contacts a food stamp office to make a request for food stamp assistance, it shall be permitted to file an application form. There is no distinction made in the law between an application for initial certification and an application for recertification. Section 11(e)(9) of the Act, 7 U.S.C. 2020(e)(9), requires State agencies to provide coupons within five days after the date of application to destitute migrant or seasonal farmworkers, households with gross incomes less than \$150 a month and liquid resources that do not exceed \$100; homeless households; and households whose combined gross

income and liquid resources are less than their monthly rent, mortgage and utilities. Since implementation of the expedited service provision of the Act, questions have arisen concerning whether expedited service requirements apply at recertification.

Nothing in the legislative history of the Act gives any indication as to whether Congress intended households eligible for expedited service to receive such service every time they are certified for the Program, only at initial certification, or when there has been a break in benefits. We originally interpreted the Act and regulations to require that expedited service screening requirements apply only at initial certification. Since the law makes no distinction between applications for initial certification and recertification, we have concluded that expedited service provisions should apply to all households at recertification. This policy was prompted by the realization that some households that move between the last time they were certified and the date of their required recertification might not receive uninterrupted benefits. We believe it was the intent of Congress to provide expedited service when a household would not receive its next allotment by its next normal issuance cycle.

Many State agencies have argued that expedited service at recertification is detrimental to recipient households because it interferes with their normal issuance cycle. Instead of receiving their benefits at the usual time each month, households recertified for expedited service often receive their benefits for the first month of the new certification period much earlier than normal. The next month they have to wait longer to receive benefits. In addition, to obtain expedited benefits, some households have to pick up their coupons at their local assistance office instead of having them mailed, which is an inconvenience to the household. We have determined that because of the requirements of Section 11(e)(2) of the Act, households may not be asked to waive their right to expedited service. Therefore, State agencies are not allowed to mail expedited issuance coupons, even at the household's request if such action would result in failure to meet the five-day requirement for delivery of benefits.

State agencies have also argued that expediting issuance for households at recertification leads to an increased administrative burden. In some States, more than 50 percent of participating households now meet the criteria for expedited service. This has placed a tremendous burden on State agencies experiencing severe budgetary

constraints, making it difficult for them to meet the 30-day and 5-day requirements for initial applications. State agencies argue that applying expedited screening requirements at recertification only increases the application processing problem without providing a substantial benefit to most households.

In light of the issues discussed above, we have again reexamined our policy and have concluded that not all households must receive expedited service at recertification. Section 11(e)(4) of the Act, 7 U.S.C. 2020(e)(4), states that households that apply in a timely fashion must receive their benefits no later than one month after the receipt of their last allotment. We believe that this provision of the law, which ensures that a household that punctually applies for recertification will continue to receive its benefits in its normal issuance cycle, should take precedence over the requirement for expedited service.

We are proposing, therefore, to amend the regulations by including a new section, 7 CFR 273.14(f), which will clarify that households which punctually apply for recertification, or who apply late but within the certification period, are not entitled to expedited service. However, households which do not apply for recertification until the month after their certification period ends are entitled to expedited service if they are otherwise eligible for such service. A conforming amendment to 7 CFR 273.2(i)(4)(iv) is also proposed.

Retrospective Suspension—7 CFR 273.21(n)

Current regulations at 7 CFR 273.21(n) allow State agencies the option of suspending issuance of benefits to a household that becomes ineligible for one month. State agencies that do not choose suspension must terminate a household's certification when it becomes ineligible, and the household must reapply to reestablish its eligibility for the Program. Current regulations at 7 CFR 273.21(o) provide that when a household is suspended based on prospective ineligibility, 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.

The need for suspension typically occurs when a household paid weekly (or biweekly) receives an extra check in a month with five (or three) paydays. Under current policy, State agencies which opt to suspend rather than terminate a household's participation

must anticipate prospectively which month the household will be ineligible and suspend the household's participation for that month. Many State agencies have received waivers that allow them to suspend the household for the issuance month corresponding to the budget month in which the household receives the extra check. This is the method used for suspension in the AFDC program. In an effort to achieve consistency between the AFDC and Food Stamp Programs, we are proposing to amend 7 CFR 273.21(n) to allow State agencies the option of prospective or retrospective suspension. The option to suspend and the method of suspending must be applied Statewide.

Implementation

The Department is proposing that the provisions of this rulemaking must be implemented no later than 180 days after publication of the final rule. The Department also proposes to allow variances resulting from implementation of the provisions of the final rule to be excluded from error analysis for 90 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security.

7 CFR Part 274

Administrative practice and procedure, Food Stamps, Fraud, Grant programs—social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, 7 CFR parts 273 and 274 are proposed to be amended as follows:

1. The authority citation of parts 273 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.2:

a. A new paragraph (c)(2)(iii) is added.

b. A new sentence is added to the end of paragraph (f)(1)(v).

c. The last sentence of paragraph (f)(8)(i)(A) is amended by removing the words “incomplete, inaccurate, inconsistent, or outdated” and adding in their place the word “questionable”.

d. The second sentence of paragraph (f)(8)(i)(C) is amended by removing the

words “incomplete, inaccurate, inconsistent, or outdated” and adding in their place the word “questionable”.

e. Paragraph (f)(8)(ii) is amended by removing the words “incomplete, inaccurate, inconsistent, or outdated” and adding in their place the word “questionable”.

f. Paragraphs (i)(4)(iii)(A), (i)(4)(iii)(B), and (i)(4)(iii)(C) are revised.

g. New paragraphs (i)(4)(iii)(D), (i)(4)(iii)(E), and (i)(4)(iii)(F) are added.

h. A new sentence is added at the end of paragraph (i)(4)(iv).

The additions and revisions read as follows:

§ 273.2. Application processing.

* * * * *

(c) *Filing an application.* * * *

(2) *Contacting the food stamp office.*
* * *

(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.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(v) *Social security numbers.* * * * A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

* * * * *

(i) *Expedited Service.* * * *

(4) *Special procedures for expediting service.* * * *

(iii) * * *

(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 any verification requirements that were postponed. For subsequent months, the household must reapply and satisfy any verification requirements which were postponed or be certified under normal processing standards. During the interview, the State agency should give the household a recertification form and schedule an appointment for a recertification interview. 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. During the interview, the State agency should give the household a recertification form and schedule an appointment for a recertification interview. 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. If the State agency chooses to exercise the option to require a second application in accordance with the introductory text of paragraph (i)(4)(iii) of this section, it shall act on that application starting with the first month after the current certification period expires. If the household is eligible, the State agency shall issue benefits within five working days of the receipt of the necessary verification. When the postponed verification requirements are not completed within 30 days after the end of the household's last certification period, the State agency shall terminate the household's participation and shall issue no further benefits.

(C) Households which apply for initial month benefits (as described in § 273.10(a)) after the 15th of the month, are processed under standard processing timeframes, have completed the application and have satisfied all verification requirements 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, shall be issued a combined allotment 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.

(D) Households which apply for initial benefits (as described in § 273.10(a)) after the 15th of the month, are processed under expedited service procedures, have completed the application, 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 will be postponed to meet the expedited timeframe. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(E) The provisions of paragraphs (i)(4)(iii)(C) and (i)(4)(iii)(D) 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 who have not satisfied the postponed verification requirements. Households eligible for expedited service may, however, receive benefits for the initial month and next subsequent month under the verification standards of paragraph (i)(4) of this section. Benefits of less than ten dollars (\$10) shall not be issued to a household under the provisions of paragraphs (i)(4)(iii)(C) and (i)(4)(iii)(D) of this section.

(F) In a State with staggered issuance, if a household applies after the 15th of the month and is certified for more than two months, it shall be issued its third month's benefits on the first working day of the third calendar month, not the staggered issuance date. 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 five 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 within 45 days of the date of application, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) * * * State agencies shall apply the provisions of this section at recertification if a household does not apply for recertification until the month after its certification period ends.

* * * * *

3. In § 273.3:

a. The existing undesignated paragraph is designated as paragraph (a), and is further amended by removing the first sentence and adding two sentences in its place.

b. Paragraph (b) is added.

The additions read as follows:

§ 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. * * *

(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.

4. In § 273.6, a new paragraph (b)(4) is added to read as follows:

§ 273.6 Social security numbers.

* * * * *

(b) *Obtaining SSNs for food stamp household members.* * * *

(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 the next recertification. If the household is unable at the next recertification to provide proof of application, the State agency shall determine if the good cause provisions of paragraph (d) of this section are applicable.

* * * * *

5. In § 273.8, the first sentence of paragraph (e)(2) is revised to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(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 \$1500 in equity value, in which event the value above \$1500 is counted.

* * *

* * * * *

7. In § 273.10:

a. The second sentence of paragraph (a)(1)(iv) is amended by adding the words "second full" after the words "benefits for the".

b. Paragraph (a)(1)(iv) is further amended by removing the third and fourth sentences.

c. Paragraph (c)(2)(iii) is revised.

d. A new sentence is added at the end of paragraph (c)(3)(ii);

e. A new sentence is added to the end of paragraph (f)(3), and four new paragraphs, (f)(3)(i), (f)(3)(ii), (f)(3)(iii), and (f)(3)(iv) are added; and

f. The first sentence of paragraph (g)(2) is amended by adding the words "if the household has complied with all recertification requirements" after "current certification period."

The additions and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(c) *Determining income.* * * *

(2) *Income only in month received.*

* * *

(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.* * * *

(ii) * * * 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.

* * * * *

(f) *Certification periods.* * * *

(3) * * * To align the PA or GA and food stamp recertification, the State agency may do the following:

(i) When the household's eligibility for PA or GA has been determined, the State agency may review the household's food stamp eligibility. If eligibility factors remain the same, the household's certification period can be extended up to an additional 12 months to align the household's food stamp recertification with its PA/GA redetermination. The State agency would be required to send a notice informing the household of changes in its certification period. At the end of the

extended certification period the household must be sent a Notice of Expiration and must be recertified before being eligible for further food stamp assistance, even if the PA/GA redetermination is not set to expire. This procedure may also be used to align a household's PA/GA and food stamp certification periods if those certification periods are no longer aligned as a result of the household's failure to comply with the PA/GA redetermination requirements.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, State agencies may assign households food stamp certification periods that expire the month following the household's required PA/GA redetermination, provided the food stamp certification period does not exceed 1 year. If a PA/GA household has not had its PA/GA redetermination by the end of the 11th month following its initial certification or its last redetermination for food stamps, the State agency shall send the household a notice of expiration of its food stamp certification period and recertify the household in accordance with the provisions of § 274.14 of this chapter.

(iii) State agencies which have a monthly reporting system and, therefore, allow more than 1 year to elapse before redetermining their PA/GA cases, but which can predict with certainty in which month the PA/GA redetermination will take place, may assign PA/GA food stamp households definite food stamp certification periods that expire at the end of the month following the month in which the PA/GA redetermination is scheduled. If for any reason the PA/GA redetermination is not made by the end of the month for which it was scheduled, the State agency shall send the household a notice of expiration of its food stamp certification period and recertify the household in accordance with the provisions of § 274.14 of this chapter.

(iv) If a household reports a change in circumstance for PA/GA, the State agency may review the household's food stamp eligibility at the same time. The household will be required to submit a recertification form for food stamps and to undergo a face-to-face interview. If the household is determined eligible, its old certification period shall be terminated and a new period not to exceed 12 months shall be assigned.

* * * * *

8. In § 273.11.

a. The heading of paragraph (b) is revised;

b. The introductory text of paragraph (b)(1)(ii) is revised.

c. Paragraph (b)(1)(ii)(B) is amended by removing the period at the end of the paragraph and adding in its place a semicolon and the word "or".

d. A new paragraph (b)(1)(ii)(C) is added;

e. A new paragraph (b)(2) is added.

The revisions and additions are as follows:

§ 273.11 Action on Households with Special Circumstances.

* * * * *

(b) *Households with income from boarders and day care.* (1) *Household with boarders.* * * *

(ii) Cost of doing business. In determining the income received from boarders, the State agency shall exclude the portion of the boarder payment that is a cost of doing business. Provided that the amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals, the cost of doing business shall be equal to one of the following:

* * * * *

(C) 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. However, if the applicant or recipient requests use of the verified actual amount, the State agency shall use the actual amount.

* * * * *

(2) *Income from day care.* Households deriving income from day care may elect one of the following methods of determining the cost of meals provided to the individuals:

(i) Actual documented costs of meals;

(ii) A standard per day amount based on estimated per meal costs; or

(iii) Current reimbursement amounts used in the Child and Adult Care Food Program.

* * * * *

9. In § 273.13, a new paragraph (b)(15) is added to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(b) *Exemptions from notice.* * * *

(15) The household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address. The household's benefits must, however, be made available to it within five working days if the household contacts the State agency during the payment period covered by a returned benefit.

10. § 273.14 is revised to read as follows:

§ 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 recertification 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. A model form (Form FCS-439) is available from FCS. 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, and a statement of needed verification required by § 273.2(c)(5) with the NOE.

(2) *Recertification form.*

(i) The State agency shall provide each household with a recertification form to obtain all information needed to determine eligibility and benefits for a new certification period. This form can only be used by households which are applying for recertification before the end of their current certification period. Recertification forms must be approved by FCS as required by § 273.2(b)(3). The recertification form must elicit from the household sufficient information regarding household composition, income and resources that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The information required by § 273.2(b)(1) (i), (ii), (iii), (iv) and (v) must be included on the recertification form. The information regarding the Income and Eligibility Verification System in § 273.2(b)(2) may be provided on a separate form. A combined form for PA and GA households may be used in accordance with § 273.2(j). Monthly reporting households shall be recertified as provided in § 273.21(q). State agencies may use the same form for households required to report changes in circumstances and monthly reporting households.

(ii) The State agency may request that the household bring the recertification form to the interview or return the form by a specified date (not less than 15 days after receipt of the form).

(3) *Interview.* (i) As part of the recertification process, the State agency shall conduct a face-to-face interview with a member of each household. The face-to-face interview may be waived in accordance with § 273.2(e). The State agency may also waive the face-to-face interview for a household that has no earned income if all of its members are elderly or disabled. The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. However, a household that requests a face-to-face interview must be granted one.

(ii) If a household receives PA/GA and will be recertified 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. The face-to-face interview shall be conducted at the same time that the household receives a face-to-face interview for PA/GA purposes. At any other recertification during that year period, the State agency may interview the household by telephone or conduct a home visit. However, a household that requests a face-to-face interview must be granted one.

(iii) If a household does not appear for an interview scheduled before it has submitted a recertification form, the State agency must reschedule the interview. 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.

(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.

(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 of applicants or recipients of SSI who apply for food stamp recertification at offices of the SSA 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 who are 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) *Delays caused by the State agency.* Households which have submitted an application for recertification in a timely manner but, due to State agency error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate upon being determined eligible, and the allotment shall not be prorated. If the household was unable to participate for the month following the expiration of the certification period because of State agency error, the household is entitled to restored benefits.

(2) *Delays caused by the household.*

(i) If a household does not submit a new application by the end of the certification period, the State agency must close the case without further action.

(ii) If a recertification form is submitted more than one month after the filing deadline, it shall be treated the same as an application for initial certification. In accordance with § 273.10(a)(1)(ii), the household's benefits shall not be prorated unless there has been a break of more than one month in the household's certification.

(iii) A household which submits an application by the filing deadline but does not appear for an interview scheduled after the application has been filed, or does not submit verification within the required timeframe, loses its right to uninterrupted benefits. The State agency has three options for handling such cases:

(A) Send the household a denial notice as soon as the household fails to appear for an interview or submit required verification information. If the interview is completed, or the household provides the required

verification information within 30 days of the date of application and is determined eligible, the household must be reinstated and receive benefits within 30 calendar days after the application was filed or within 10 days of the date the interview is completed or required verification information is provided, whichever is later. In no event shall a subsequent period's benefits be provided before the end of the current certification period.

(B) Deny the household's recertification application at the end of the last month of the current certification period. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate the households without requiring new applications if the households have been interviewed and have provided the required verification information within 30 days after the applications have been denied.

(C) Deny the household's recertification request 30 days after application. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate households without requiring new applications if such households have been interviewed and have provided the required verification within 30 days after the applications have been denied.

(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 in a timely manner for recertification or applies late but within the certification period.

11. In § 273.21, paragraph (n)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(n) *Suspension.* * * *

(1) * * * 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.

* * * * *

PART 274—ISSUANCE AND USE OF COUPONS

12. In § 274.2:

a. Paragraphs (b)(2), (b)(3), and (b)(4) are removed.

b. Paragraphs (b)(1), (c), (d), and (e) are redesignated paragraphs (b), (d), (e), and (f), respectively.

c. Two sentences are added to the end of newly redesignated paragraph (b).

d. A new paragraph (c) is added.

The additions read as follows:

§ 274.2 Providing benefits to participants.

* * * * *

(b) * * * For households entitled to expedited service, the State agency shall make available to the household coupons or an ATP card, not later than the fifth calendar day following the date the application was filed. 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 fifth calendar day following the day the application was filed.

(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 (one) allotment, or as two separate allotments made available at the same time, in accordance with the timeframes specified in S273.2(i) of this chapter.

* * * * *

Dated: January 4, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-635 Filed 1-10-95; 8:45 am]

BILLING CODE 3410-30-U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Proposed Requirements for Child-Resistant Packaging; Packages Containing 250 mg or More of Naproxen: Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: On November 14, 1994, the Commission issued a proposed rule under the Poison Prevention Packaging Act to require child-resistant packaging for naproxen preparations containing 250 mg or more of naproxen per package. The Commission had specified that comments should be submitted by January 30, 1995. After receiving a request to extend the comment period, the Commission has decided to do so, and it will permit comments until March 1, 1995.

DATES: Comments on the proposal should be submitted not later than March 1, 1995.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East West Highway, Bethesda, Maryland 20814, telephone (301) 504-0800.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0477 ext. 1199.

SUPPLEMENTARY INFORMATION: The Commission recently published in the **Federal Register** proposed requirements for special packaging (also known as child resistant packaging) for naproxen preparations containing 250 mg or more of naproxen per package. 59 FR 56445.

These proposed requirements were issued under the authority of the Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1471-1476. The PPPA authorizes the Commission to establish standards for the special packaging of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for the substance. 15 U.S.C. 1472(a).

The November 14, 1994, **Federal Register** notice provides details concerning toxicity, dosage, and packaging of naproxen. The notice also discusses findings that the PPPA requires the Commission to make concerning (1) the hazard to children presented by the substances; (2) the technical feasibility, practicability, and appropriateness of special packaging; and (3) the reasonableness of the proposed standard.

The Commission received a request from the Syntex Corporation ("Syntex") asking for an extension of the comment period allowed for the proposed requirements. Syntex and Proctor & Gamble jointly have three years exclusivity to manufacture and market the only over-the-counter naproxen product. Syntex stated that since it has recently been acquired by Hoffmann-La Roche, Ltd., additional time is necessary for preparation and review of comments by the new management. Syntex