(1) any written statement reporting or complaining of a PACA violation(s) filed by any officer or agency of any State or Territory having jurisdiction over licensees or persons subject to license, or any other interested person who has knowledge of or information regarding a possible violation, other than an employee of an agency of USDA administering this Act or a person filing a complaint under Section 6(c);

(2) any written notice of intent to preserve the benefits of the trust established under section 5 of this Act; or

(3) any official certificate(s) of the United States Government or States or Territories of the United States.

(b) Any written notification may be filed by delivering it to any office of USDA or any official thereof responsible for administering the Act. A written notification which is so filed, or any expansion of an investigation resulting from any indication of additional further violations of the Act found as a consequence of an investigation based on written notification or complaint, shall also be deemed to constitute a complaint under section 13(a) of this Act.

(c) Upon becoming aware of a complaint under Section 6(a) or 6(b) of this Act, the Secretary will determine if reasonable grounds exist for an investigation of such complaint for disciplinary action. If the investigation substantiates the existence of violations, a formal disciplinary complaint may be filed by the Secretary as described under Section 6(c)(2) of the Act.

(d) Whenever an investigation, initiated as a result of a written notification or complaint under Section 6(b) of the Act, is commenced, or expanded to include new violations, notice shall be given by the Secretary to the subject of the investigation within thirty (30) days of the commencement or expansion of the investigation. Within one hundred and eighty (180) days after giving initial notice, the Secretary shall provide the subject of the investigation with notice of the status of the investigation, including whether the Secretary intends to issue a complaint under Section 6(c)(2) of this Act, terminate the investigation, or continue or expand the investigation. Thereafter, the subject of the investigation may request in writing, no more frequently than every ninety (90) days, a status report from the Chief of the PACA Branch who shall respond thereto within fourteen (14) days of receiving the request. When an investigation is terminated, the Secretary shall, within fourteen (14) days, notify the subject of the investigation of the termination. In every case in which notice or response is required under this subsection such notice or response shall be accomplished by personal service or by posting the notice or response by certified mail to the last known address of the subject of the investigation.

Dated: September 4, 1996.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–23020 Filed 9–9–96; 8:45 am]

BILLING CODE 3410–02–P

Food and Consumer Service

7 CFR Parts 271 and 275

[Amdt No. 373]

RIN 0584–AB38

Food Stamp Program: 1995 Quality Control Technical Amendments

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Consumer Service is proposing technical changes to the Food Stamp Program's Quality Control System which will reduce the workload on State agencies and improve the efficiency of the quality control system.

DATES: Comments must be received by November 12, 1996, in order to be assured of consideration.

ADDRESSES: Please address all comments to John H. Knaus, Branch Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at Room 904, 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, at the above address, or by telephone at (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Executive Order 12866.

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. It has been determined that the following cost-benefits would result from adoption of the provisions of this rule:

1. State agency sample size. The provision reducing the minimum sample size for active and negative case reviews will benefit those State agencies who will be required to review fewer cases. These are States choosing the ''smaller range'' in their sample plans with current minimum active or negative case sample sizes above the minimum sample size. In Fiscal Year 1992, before the waiver was available, States reviewed nearly 52,000 active and over 30,000 negative cases. Assuming a 15 percent reduction in cases, under this provision, States will be required to review nearly 8,000 fewer active cases and about 4,500 fewer negative cases. Assuming that each active case review costs $180 and each negative case review costs $40 (taken from studies of active and negative case reviews and adjusted to account for wage inflation), total potential savings for States and FCS combined is an estimated $1.6 million. Savings for States are estimated at $800,000.

2. Home visits. It is estimated that minimal savings in quality control expenditures will result from this provision as it is expected that State agencies will channel the resources into other aspects of quality control operations.

3. Error dollar tolerance level. The provision to modify the tolerance level from $5.00 to $10.00 for excluding small errors will benefit those State agencies which qualify for enhanced funding. Based on Fiscal Year 1995 data, State agencies would qualify for an additional $562,811.

The Department has examined the impact on potential State agency liability calculations from the combined effect of changing the error dollar tolerance level and the case completion standard. Data from two fiscal years has been analyzed to determine how these changes would effect liability amounts. The data shows that in one year the potential liability would have been higher, and in another year it would have been lower. In both situations the amount of the change was under one million dollars.

It is not anticipated that any other provisions of this rule will have any significant impact on the costs or benefits to either the State agencies or FCS.

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 at 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778.

This proposed 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'' section 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)(10) 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 liabilities) or Part 283 (for rules related to quality control liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

Agency Information Collection Activities: Proposed Collection; Comment Request; FCS–380, Integrated Quality Control Review Worksheet

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposal to extend approval for information collection used on form FCS–380, the Integrated Quality Control Review Worksheet. The provisions of this rule do not impact on the approved information collection burden.

Written comments must be submitted on or before November 12, 1996.

Send comments and requests for copies of this information collection to: John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, U.S. Department of Agriculture, Room 904, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

For further information contact: John H. Knaus, (703) 305–2474.

Title: Integrated Quality Control Review Worksheet.

OMB Number: 0584–0074.

Form Number: FCS–380.

Expiration Date: 03/31/97.

Type of Request: Extension of a currently approved information collection.

Abstract: Quality Control monitors and reduces the rate of error in determining basic eligibility and benefit levels for the Food Stamp Program. The form FCS–380 serves as the source document from which other reports are compiled by State officials to be sent to the federal office in Washington, DC.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 61,840.

Estimated Time per Response: 9 Hours.

Estimated Total Annual Burden: 558,019 Hours.

Background

Since 1988, the Food and Consumer Service (''FCS'') has published a number of proposed and final rules, all of which implemented changes in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011, *et seq.*, (the ''Act''). These changes, required by the Hunger Prevention Act of 1988, Pub. L. 100–435 (the ''HPA'') and/or the Mickey Leland Childhood Hunger Relief Act of 1993, Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66 (the ''Leland Act'') affected the way FCS calculates liabilities and enhanced funding, and the way State agencies may appeal those liabilities.

During this time, certain operational issues have arisen in quality control (''QC''). This action proposes to resolve these issues. FCS' intentions are to reduce the workload on both the State agencies and on itself and to arrive at final review findings, error rates, liabilities, and enhanced funding amounts more efficiently. The proposed changes would: (1) Clarify the process for conducting a quality control review of negative cases and add suspended cases, which are cases that are certified for the Food Stamp Program (''Program'') but do not receive benefits, to the sample universe of negative cases; (2) permit State agencies to reduce their sample sizes; (3) clarify the minimum size of the Federal subsample; (4) clarify State sampling procedures; (5) change the formulas for calculating Federal subsample sizes; (6) increase the current tolerance level for excluding small errors; (7) modify the current requirement that requires that most quality control interviews be conducted in the recipient's home; (8) adjust the standard for the completion of quality control reviews from the current standard of 100 percent to a 98 percent completion requirement; and (9) clarify the circumstances under which the Federal findings of subsampled reviews will be changed.

Negative Case Reviews

This action proposes to clarify issues surrounding the review of negative cases and to expand the universe of cases to be reviewed. These proposals are the culmination of an FCS look at the quality control review process for negative cases, including an examination of that process in response to Congress' request contained in the HPA, 7 U.S.C. 2025(d). As a result of that request, FCS entered into a research contract with Abt Associates to develop and pilot test alternative approaches to measuring the extent of nonpayments to eligible households. In addition, prior to the study conducted by Abt Associates, the General Accounting Office (GAO) was asked by the Chairman, Subcommittee on Domestic Marketing, Consumer Relations, and Nutrition, House Committee on Agriculture, to review the accuracy of State reported error rates for improper denials and terminations. As a result of its review, GAO made three recommendations: (1) That FCS annually review a sample of each State's quality control reviews of denials or terminations and adjust States' reported denial or termination error rates accordingly; (2) that FCS examine alternatives to encourage States

to reduce improper denial or termination error rates, including seeking authority to hold States financially liable for their improper denials or terminations; (3) that FCS monitor States' quality control review practices to ensure that the appropriate cases are reviewed and the required number of reviews are completed on time. Based on the results of the study, FCS determined to strengthen monitoring of the negative action review process, renew emphasis on corrective action to reduce improper negative actions, and hold States accountable within existing statutory and regulatory authorities.

With this background information in mind, FCS determined that certain changes to the regulations governing negative case reviews are warranted.

1. Federal Monitoring of State Agency Error Rates for Negative Case Reviews

FCS is proposing to clarify the requirements and procedures for Federal monitoring of the negative case reviews conducted by State agencies. Currently under regulations at 7 CFR 275.3(c) FCS is required to validate a State agency's negative case error rate only when the State agency's payment and underissuance rate appear to entitle it to enhanced funding and its reported negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year.

The regulation at 7 CFR 275.3(c) only provides the minimum level at which case review and validation are required. In practice, as circumstances warranted, review activity has been expanded. For example, review activities were expanded in response to the GAO audit. In addition, regional offices periodically review the quality of State agencies' negative case review processes. Unlike the results of the validation reviews, the results of these periodic reviews are not used to determine eligibility for enhanced funding, but rather to ensure the accuracy of States' procedures in conducting reviews. FCS is proposing changes to clarify that FCS retains its authority to conduct these periodic reviews, independent of the minimum validation activity required by regulation. The proposal is to require validation when both: (1) A State agency's reported negative case error rate is below or within two percentage points above the national weighted mean negative case error rate for the prior fiscal year; and (2) its payment error rate appears to entitle it to enhanced funding. It is anticipated that this increased validation activity will have a minimal impact on a State agency's workload. It will increase the number of cases reviewed by some FCS Regional offices. The proposed regulation clarifies that FCS may review a portion or all of a State agency's cases as FCS deems appropriate.

2. Inclusion of Suspended Cases in the Negative Sample Universe

The quality control system has two sampling universes: the active case universe and the negative case universe. The universe for active cases includes households which have been certified eligible for food stamp benefits and which have received benefits for the sample month. The negative case universe includes households whose applications for food stamp benefits were denied or whose certification for participation in the Program has been terminated.

In certain cases, State agencies are allowed or required to suspend a food stamp household instead of denying its application or terminating its participation in the Program. Suspended households are certified for the Program, but do not receive any benefits. Households under monthly reporting systems may be suspended for one month rather than terminated if they become temporarily ineligible due to a periodic increase in recurring income, such as receipt of a fifth weekly paycheck during a month (7 CFR 273.21(n)(1)). Non-categorically eligible households of three or more persons which are eligible but entitled to zero benefits because of excess income may be certified and suspended rather than denied, and categorically eligible households who are entitled to zero benefits due to excess income must be suspended, since they cannot be denied under the provisions of the Act 7 U.S.C. 2014(a) and regulations (7 CFR 273.10(e)(2)(iii)(B); 7 CFR 273.2(j)(2)(vii)(F); 7 CFR 273.2(j)(4)(iii)(C)).

Under current regulations, suspended cases are excluded from both the active and negative case universes of the Program quality control system. FCS believes that these cases should be reviewed because of the potential for underissuances, and that it is more logical to review these cases with denied and terminated cases (negative cases) rather than with cases that received benefits (active cases). With this rule, FCS is proposing to include suspended cases in the negative case universe.

3. Use of the Action Date To Determine the Month in Which Negative Cases Are Included in the Sample Universe; Clarification of Meaning of ''Break in Participation'' for Suspended and Terminated Cases

In order to have an accurate measure of the correctness of negative actions, consistency in application of quality control procedures is necessary. FCS is concerned that problems State agencies have experienced in constructing the sample frame for negative cases may have resulted in failure to include certain cases in the negative sample universe. For example, in some cases when a household is denied and subsequently reapplies and is certified, the initial denial or denials have not been considered to be subject to review as negative actions. FCS is also concerned that there be consistency in the procedures used to determine whether an action to suspend or terminate a household has actually resulted in a suspension or termination.

Current regulations include a negative case in the sample universe for the month for which the denial or termination is effective. The regulations exclude from the negative universe any negative actions which were taken against a household which did not result in the household actually being denied or terminated. Sampling problems occur if States cannot sample the months for which the action is effective. This occurs because the actions themselves may occur after, during, or before the month for which the action is effective. FCS proposes to allow State agencies to sample the action date rather than the effective date to make sampling easier.

As a result of our review of these issues, FCS is proposing to revise the regulations to include denied, suspended, and terminated cases in the negative case universe in the month in which the action to deny, suspend, or terminate food stamp benefits was taken, and clarify that an action to terminate or suspend a household has actually resulted in a suspension or termination if the household experiences a break in participation in the program as a result of deliberate State agency action. The intent of these changes is to allow State agencies to construct consistent and reliable sampling plans for negative actions, and to ensure that negative actions which have the result of denying benefits to clients are subject to review, even if the actions are subsequently reversed, unless the reversal occurs under specified conditions and within specified timeframes.

FCS will allow State agencies to specify in their sampling plans the date on which the negative action would be considered to have taken place, and which would be considered the review date. Depending on the characteristics of individual State systems, this could be the date on which the eligibility worker makes the decision to suspend, deny, or terminate the case, the date on which the decision is entered into the data processing system, the date of the notice to the client, or the date the negative action becomes effective. A State may choose to use different dates as the date of the action for denials and suspensions/terminations. For example, it may choose to sample denials based on the date of the eligibility worker's decision, but sample suspensions and terminations based on the date the action goes into effect, to avoid sampling cases which are not subject to review because the negative action was never implemented. FCS' concern is not with the particular date which the State agency considers to be the action date, but rather the identification of a specific date associated with each negative action which can be applied consistently across all negative cases of a given type, and which will allow the State agency to ensure that all negative actions which are subject to review are included in the negative sample frame. Thus, if the State agency elects to use a date other than the decision date to construct its sample frame for negative cases, it is possible that the review date for these cases may fall outside the sample month. Negative cases shall not be dropped from the sample frame because the review date falls outside the sample month.

4. FCS Will Not Establish a Dollar Loss Rate for Negative Cases

One aspect of negative case reviews that was of interest to Congress was the establishment of a dollar loss rate. During its study, Abt Associates looked at the possibility of developing a reliable dollar loss figure. In its recommendations, Abt stated a partial measure of loss could be determined by the frequency and amount of benefits restored to improperly denied or terminated households. While FCS recognizes the possibility of establishing a partial measure, it does not believe that an effort to obtain such limited information is warranted in light of the increased workload and reporting burdens that would fall to the State agencies. In addition, FCS does not believe that the use of restored benefit information translates directly to a dollar loss figure for these cases. We have not proposed the establishment of a dollar loss rate in this rulemaking.

State Agency Minimum Sample Sizes for Active and Negative Case Reviews

FCS now requires each State agency to choose one of two ranges for calculating its minimum sample size for active case reviews. One is a range of 300 to 2400 reviews per year. The other, the ''smaller range'', is a range of 300 to 1200 reviews per year. The exact size of each State agency's minimum sample size for each range is determined by formulas that base sample size on the size of State Program caseloads (7 CFR 275.11(b)(1)).

If a State agency wants to choose the ''smaller range'' it must include in its sampling plan a statement that it ''will not use the size of the sample chosen as a basis for challenging the resulting error rates'' (currently at 7 CFR 275.11(a)(2)(iv)). If a State agency does not include that statement in its sampling plan, it must calculate its minimum sample size for active case reviews using the 300 to 2400 review range.

The regulations now offer State agencies only one range for determining minimum sample size for negative case reviews. That is a range of 150 to 800 reviews (7 CFR 275.11(b)(2)).

There are no maximum sample sizes; a State agency may select and review any number of cases above its minimum.

FCS has granted waivers of the regulations on minimum sample sizes for active case reviews, in order to improve the efficiency of the quality control system without significantly affecting the reliability of quality control information. In order to make these temporary reductions permanent and to determine the appropriate conditions for these reductions, FCS is proposing to include the terms of these waivers in the Food Stamp Program regulations. FCS is also proposing to offer State agencies a choice of ranges to use in determining minimum sample sizes for negative case reviews that is similar to the choice of ranges for determining minimum sample sizes for active case reviews.

FCS is proposing to reduce the size of the ''smaller range'' for minimum sample sizes for active case reviews. The proposed range would be 300 to 1020 reviews, a 15 percent reduction at the top from the current range.

In order to use the minimum sample size calculated from the 300 to 1020 case range, a State agency would still have to include in its sampling plan the statement from current 7 CFR 275.11(a)(2)(iv) quoted above. The purpose of the statement, as described in the February 17, 1984 preamble to the rule that established the requirement for the statement, was to serve as ''a means of assuring that State agencies consider what degree of reliability they need.'' (49 FR 6295).

There would be no other conditions on a State agency's use of the revised ''smaller range''. It would be up to the State agency to determine the most effective use of available resources.

FCS is not proposing to reduce the lower bound of the minimum sample size ranges for active case reviews. For those State agencies whose sample size is at the lower bound of the ranges, a reduction in sample size would mean a reduction in reliability of quality control information which would be unacceptable to FCS.

FCS is likewise also proposing the creation of a ''smaller range'' for minimum sample sizes for negative case reviews. The ''smaller range'', representing a 15 percent reduction at the top from current requirements, would be 150 to 680 reviews per year. The current required range of 150 to 800 reviews per year would be retained as the larger range for minimum sample sizes for negative case reviews.

If a State agency chose to use the ''smaller range'' to calculate its minimum sample size for negative case reviews, it would be required to include in its sampling plan the statement in proposed new § 275.11(a)(2)(iv) that it ''will not use the size of the sample chosen as a basis for challenging the resulting error rates.'' If a State agency did not include that statement, it would be required to calculate its minimum sample size for negative case reviews according to the larger range. As with active case reviews, the ranges would define minimum sample sizes; State agencies could always select more.

FCS is not proposing to reduce the lower bound of the minimum sample size ranges for negative case reviews. For those State agencies whose sample size is at the lower bound of the ranges, a reduction in sample size would mean a reduction in reliability of quality control information which would be unacceptable to FCS.

Federal Sample Sizes

On November 27, 1991, FCS published a final rule entitled ''Miscellaneous Quality Control Provisions of the Hunger Prevention Act of 1988'' (56 FR 60045). This rule permits FCS to select and to review samples smaller than those indicated by the tables if the State agency fails to complete its required sample.

FCS is proposing to change the headings to the tables which set out the

formulas for calculation of the Federal subsample size. These tables appear at 7 CFR 275.3(c)(1)(i) and 7 CFR 275.2(c)(3)(i) in current regulations; they appear in paragraphs 275.3(c)(1)(i)(A) and (B) and 275.3(c)(3)(i) in the proposed rule. The phrase ''Federal subsample target'' would appear, rather than the current phrase ''Federal annual sample size''. This change *would not permit* FCS to select and to review a smaller subsample for any reason other than a State agency's failure to complete the minimum number of reviews in its required sample size.

State Sampling Procedures

FCS is proposing four sets of technical clarifications to the sampling regulations so that the regulations will match the way State agencies design and implement their sampling plans.

1. Selection of One-Twelfth of the Sample Each Month

Current regulations require State agencies to explain the basis of each month's sample if it is ''other than one twelfth of the active and negative sample sizes.'' Some State agencies have expressed concern that the regulations require that the agency select *exactly* one-twelfth of its sample in each month. This was never FCS' intent. It is inevitable that caseloads will fluctuate, and that the number of sampled households will rise and fall slightly each month. FCS' concern is not with these variations, but rather with the accuracy and integrity of the error rate estimate generated from the quality control samples. FCS has reviewed this provision in conjunction with the other regulatory provisions governing State sampling plans, and has determined that provisions requiring that sampling procedures conform to the standard principles of probability sampling and that state samples produce estimates with an acceptable, mandated level of reliability are sufficient to ensure that deviations, minor or otherwise, from equal monthly sample sizes will not jeopardize the validity nor the precision of those error rate estimates. Therefore, in § 275.11, FCS proposes to delete paragraph (a)(2)(iii) and renumber paragraph (a)(2)(iv) as (a)(2)(iii). We are also making technical corrections to regulatory references appearing in § 275.11(b)(1)(ii) and (b)(1)(iii). Each of these paragraphs currently contains an erroneous reference to § 275.11(a)(2)(viii), which should be to current § 275.11(a)(2)(iv). Since paragraph § 275.11(a)(2)(iv) will now be renumbered, the reference will be corrected to refer to (a)(2)(iii).

2. Sampling Plans Must Conform to Accepted Statistical Theory

FCS is proposing to amend the regulations at 7 CFR 275.11(a)(3) to require that all sample designs conform to commonly acceptable statistical theory and application.

3. Basis for Final Sample Size

A State agency must calculate its required sample sizes at least twice for each review period. The first calculation occurs before the review period begins, when the State agency *anticipates* what its average monthly caseload will be. The second calculation occurs after the review period ends, when the State agency *knows* exactly what its average monthly caseload was. FCS is proposing to delete the word ''anticipated'' from paragraph 275.11(b)(1)(iv) and current (b)(2)(ii) (revised (b)(2)(iv)), to clarify that the final sample size depends upon the State agency's actual average monthly caseload.

Current regulations at 7 CFR 275.11(b)(3) provide that FCS will not penalize a State agency if its caseload increases by less than 20 percent from the estimated caseload number that the State agency used to determine the size of its sample. FCS is proposing to clarify that this estimated caseload number is the one *initially* used to determine the sample size. Sample sizes will be found to be adequate if at least the minimum required sample size for the estimated caseload is chosen, and the actual caseload is no larger than 120% of the estimated caseload.

4. Number of Households Subject to Review is the Basis for the Sample Size

Currently, the tables that describe the State agency's required sample sizes use the phrase ''average monthly active households'' and ''average monthly negative households''. However, the actual practice is to use the ''average monthly reviewable caseload'' as the basis for calculating minimum sample sizes for both active and negative case reviews. Therefore, FCS is proposing to clarify the wording in the headings in the tables in proposed 7 CFR 275.3(c)(1)(i) (A) and (B), and in current 7 CFR 275.3 (c)(3)(i), 7 CFR 275.11 (b)(1) (ii) and (iii), and proposed 7 CFR 275.11 (b)(2) (i) and (ii). Please see FNS Handbook 311, section 3121.

Federal Subsample Size Formulas

For both active and negative case reviews, FCS reviews a subsample of the State agency's completed reviews. The minimum Federal subsample sizes are determined by formulas that are based on the number of reviews that a State agency has completed. For example, if a State agency completed 1000 active case reviews, FCS would select a minimum subsample of 344 active case reviews. The range of the minimum subsample size for active case reviews is 150 to 400. The range of the minimum subsample size for negative case reviews is 75 to 160.

Because FCS is proposing a change in the number of cases that a State agency is required to complete, use of the current formulas for calculating subsample sizes would result in a decrease in the size of the minimum Federal subsample for a State agency that chooses the ''smaller ranges'' which FCS has proposed. However, FCS does not intend to reduce the size of the Federal subsample. Without a regulatory change, the formula for determining FCS' minimum subsample sizes would not accurately indicate the number of reviews that FCS would actually select for the subsample.

So that the public is aware of FCS' actual minimum subsample sizes, FCS is proposing revised formulas for the minimum active and negative Federal subsamples. These proposed formulas, when applied to the new proposed ''smaller ranges'' for State samples, would yield the current ranges for the Federal subsample. Under FCS' proposal, Federal reviewers could still select and review more cases than the minimum subsample.

Error Dollar Tolerance Level

Current regulations at 7 CFR 275.12(f)(2), first published August 3, 1979 (44 FR 45887) provide that only overissuances or underissuances to eligible households in an amount greater than $5.00 shall be coded and reported in completing the quality control review of a sampled case. In the proposed regulations published April 10, 1979 (44 FR 21517) the Department cited as one of the primary reasons for the proposed $5.00 tolerance the intention to ''obviate the need to expend funds to correct minor variations between the reviewer's and the eligibility worker's allotment figures.'' Since its inception 15 years ago the $5.00 tolerance figure has not been adjusted to take into account either increases in the Thrifty Food Plan, upon which food stamp allotments are based, or inflation in general. The Department has determined that because of the inflation to food stamp allotments which has occurred over the past 15 years an adjustment must be made to the tolerance level figure, in order to insure that minor variations between the reviewer's and eligibility worker's allotment figures continue to be

excluded from the error determination process.

The Department proposes to raise the $5.00 tolerance level to $10.00, in order to compensate for the inflation which has occurred since the $5.00 tolerance was first established. Only those overissuances to eligible households, or underissuances to eligible households which exceeded the $10.00 tolerance figure would be reported and coded in the completion of quality control reviews. Based on an analysis of Fiscal Year 1993 quality control case review figures, an increase of the tolerance level to $10.00 would have the overall effect of decreasing the quality control National Average Payment Error Rate by .17 percent, and an increase in total liability amounts of $650,000. The slight increase in total liability amounts is due to the fact that liability figures are based, in part, on the percentage that an individual State agency's Payment Error Rate exceeds the National Average Payment Error Rate.

Home Visit Requirement

Current regulations at 7 CFR 275.12(c)(1), first published August 3, 1979, (44 FR 45895) specify that a face-to-face, personal interview, between the quality control reviewer and a responsible member of the household under review, is a required component of all active quality control reviews conducted. The regulations specify that most of these personal interviews shall take place in the participant's home, what is commonly referred to as a ''home visit''. The Department believes that the need for the personal interview to take place in the participant's home is no longer as great as it was when these provisions were first implemented. This is due, in part, to the greater variety of information sources, including computer data bases, which have been developed over the years to aid the reviewer in verifying the circumstances of the food stamp household under quality control review.

The Department is proposing to amend the requirement for personal interviews to simply require a face-to-face personal interview. It is expected that the personal interview would take place at an appropriate State agency certification office, in the participant's home, or at a mutually agreed upon alternative location. The State agency would determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at 7 CFR 273.2(e)(2). These regulations provide that an office interview shall be waived under certain hardship conditions (for example, if all household members are disabled or elderly). Under such hardship conditions the quality control reviewer would conduct the personal interview either with an authorized representative (if one has been appointed by the household) or conduct the personal interview in the participant's home.

Conducting Quality Control Reviews Against Federal Regulations

Current regulations at 7 CFR 275.3(c) for Federal validation reviews, published February 4, 1987 (52 FR 3402) and 7 CFR 275.10(a) for quality control reviews conducted by the State agencies, published February 17, 1984, (49 FR 6294) specify that all active and negative quality control reviews shall be conducted by ''reviewing against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions.'' This provision was made because the Department no longer had authority to require approval of State agency manuals prior to their use. It was the intent of the Department to eliminate the use of the State agency manuals in the quality control review process. In the preamble to the February 17, 1984, final rulemaking it is stated that although the Department no longer had the authority to require approval of manuals prior to their use, the rule did not prohibit their use for quality control review purposes. The Department expected that most State agencies would continue to use their manuals as the basis for quality control reviews. Commenters pointed out that this would result in Federal quality control reviewers finding errors in manuals before State agencies were otherwise notified of them, and that these errors would affect the regressed error rates. The commenters objected to this use of quality control reviews and requested that State agencies be given time to correct manuals before an error is counted. These comments were not adopted because the Department believed that if State agencies were not liable for certification errors resulting from manual materials from the date those materials were in effect, there would have been less of an incentive to implement regulations on time and in conformance with the regulations.

The Department believes that changes over the years in other areas of the regulations, including the provisions at 7 CFR 275.12(d)(2)(vii) published November 23, 1990, (55 FR 48831) which provide a variance exclusion for the timely implementation of new regulations, provide the incentive to the State agencies to implement regulatory changes in a timely manner. Therefore, the Department is considering amending regulations in order to provide a variance exclusion for any erroneous payments which result from the State agency having followed State agency policies or directives, provided that these policies or directives were provided to FCS prior to implementation and FCS had not notified the State agency that these policies were contrary to Federal law or regulations. This would not encompass situations where a State agency might knowingly violate Federal law or regulations. This variance exclusion could include changes in the computer programming of any State agency automated certification system. Providing a variance exclusion in this area, whether cited by State agency or Federal quality control reviewers, would have the effect of holding the State agency harmless from any errors resulting from inaccurate instructions appearing in State manuals. At the same time, maintaining the current practice of conducting quality control reviews against the Food Stamp Act and regulations would assist the State agencies and FCS in identifying, for corrective action, any erroneous instructions contained in State agency manuals, policies, or directives.

The Department wishes to solicit comments from all interested parties on the appropriateness and potential consequences such a variance exclusion would have on the administration of the Program.

Quality Control Review Case Completion Standard

Current regulations at 7 CFR 275.23(e)(7)(iii), first published February 17, 1984 (49 FR 6292) provide that an adjustment be made to a State agency's regressed error rates any time that the State agency fails to complete 100 percent of its required sample size by assigning two standard errors of the estimated error rates added to the regressed error rates, to those cases not completed. (This was ''two standard deviations'' in prior regulations and has been changed to use the correct terminology for the adjustment that is done. Standard deviation refers to the true error rate, while the standard error refers to the estimate of the error rate.) Prior to the publication of the February 17, 1984 rule the completion standard had been 95 percent. It was the belief of the Department that the 100 percent completion standard was the only standard which would minimize any bias which incomplete cases could cause. In addition, because of changes which reduced the types of cases which would be considered incomplete, it was

believed that many State agencies would complete such a high percentage of their minimum sample size that the impact from the 100 percent completion standard would be minimal. However, experience has shown that there remain categories of cases which State agencies are unable to complete despite all efforts to do so on the part of the quality control reviewers. These cases include those in which the household under review refuses to cooperate with the quality control reviewer despite repeated attempts on the part of the State agency, including disqualification of the household from the Food Stamp Program, to gain the household's cooperation. An additional category is cases in which the reviewer is unable to verify the actual circumstances of the household for the time period under review, despite repeated attempts to do so.

The Department proposes to amend the current requirement that a State agency complete 100 percent of its minimum required sample size. The new standard for State agency completion will be 98 percent of its minimum required sample size. In the event that a State agency fails to complete 98 percent of its minimum required sample size, error rates would be adjusted using the current regulatory formula which is based on a 100 percent completion requirement.

Changing Federal Case Findings and Disposition

In active reviews, a *finding* is the determination of the accuracy of the State agency's authorized allotment for the household for the sample month. If the allotment was erroneous, the finding includes the amount of the error. In negative reviews, a *finding* is the determination of the validity of the State agency's decision to deny or terminate participation in the Food Stamp Program. For both active and negative reviews the *disposition* is the determination of whether the circumstances of the review meet the standards to be considered completed, not completed, or not subject to review.

Current regulations, FNS Handbook 315, and current administrative practices describe the following as a typical (although not mandatory) way to handle a subsampled case that the Federal reviewer has completed. (1) FCS informs the State agency of the Federal findings and disposition for the case. This is done within seven days of the completion of the Federal review. (2) The State agency requests arbitration if it disagrees with some aspect of the FCS findings or disposition of the review. Under current regulations the State agency has 28 days to request arbitration. (3) During the same 28 day period the State agency may request that FCS reconsider the Federal findings or disposition in the case. (4) If FCS changes the Federal findings or disposition during the 28 day period because of the reconsideration, the new Federal findings/disposition are transmitted to the State agency, and a new 28 day period to request arbitration is provided for.

There are circumstances under which FCS will currently change Federal findings/disposition after the 28 day deadline for requesting arbitration. Generally the reason for any changes are to arrive at correct Federal findings.

The Department is proposing to codify into regulations the policies and practices which dictate when, and under what circumstances, FCS will change the Federal findings or disposition for a specific case. The Department has two goals in this proposal. First, the Department wishes to clarify the circumstances under which FCS will change Federal findings/disposition in order to promote clear, consistent application of its policies. The second goal in proposing these changes is to ensure the accurate determination of the error rates for all State agencies. The proposed changes are as follows:

1. Informal Resolution

FCS *would* change the Federal findings or disposition if, as a result of the informal resolution process, both the State agency and FCS agreed on a new finding or disposition. The informal resolution process should begin in the period prior to the 28 day deadline which a State agency has for requesting arbitration. The informal resolution process may also take place after the 28 day deadline, but prior to any formal decision by an arbitrator, provided that the State agency has timely requested arbitration of the case. It should be noted that the 28 day timeframe specified in this proposal is based on current regulations which provide State agencies with 28 days to request arbitration. Program changes mandated by the Leland Act regarding the timeframes for completing all review work and resolving all differences in review findings may require a modification of the timeframes for State agencies to request arbitration. If such a modification of the timeframes for requesting arbitration is made, it will be necessary in the final rule to adjust the timeframes for informal resolution.

2. Ruling by an Arbitrator

FCS *would* change the Federal findings or disposition whenever an arbitrator's decision requires that a change be made.

3. Implementation of a Regulation, Law, or Waiver

Whenever a change in Federal findings or dispositions is the only way to implement a change in regulations, an amendment to the Food Stamp Act, or retroactive provisions to a waiver, FCS *would* make the change.

4. Correct any Application of Incorrect Written Policy

Current regulations at 7 CFR 275.12(d)(2)(viii) exclude ''any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies.'' The regulations go on to describe written policy as that in regulations, notices, handbooks, category three and four policy memoranda, and regional policy memoranda. The exclusion of these variances is required by section 16(c)(3)(B) of the Food Stamp Act (7 U.S.C. 2025).

The Department *would* change a Federal finding/disposition whenever it became aware that a variance which had been cited was the result of correct State application of an incorrect written policy provided by a Departmental employee authorized to issue FSP policy. It is likely that the State agency and FCS will not become aware of the problem until well after the State agency's deadline for requesting arbitration. This is because almost all parties involved, State agency quality control and certification policy staff, as well as FCS's regional office staff, will think that the written policy that they are following is correct. Therefore, in order to ensure that the State agency is not harmed by the Department's incorrect policy, the Department is proposing that the variance exclusion at 7 CFR 275.12(d)(2)(viii) may be made in the Federal findings at any time that the problem is discovered.

FCS would not make a change based upon new factual information. The Department is taking this position for three reasons. First, it is the responsibility of the State agency to obtain all necessary information at the time the State quality control reviewer conducts the review. Even if the Federal reviewer obtains conflicting information, the State reviewer has two more opportunities to resolve

conflicting information- when the State agency requests regional arbitration, and again if the dispute moves to national arbitration.

Second, if the household's circumstances were not reasonably certain at the time of the State agency's review, the case should have been disposed of as not completed. It does not seem likely that reasonably verified information would be contradicted at a later time.

Third, the Department recognizes the need for final closure at some point in the resolution process. Section 13951 of the Leland Act specifies that ''no later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed.'' The Department believes that without providing some limits on the resolution process this mandated deadline cannot be achieved.

5. Conflict in a Federal Finding/ Disposition

If, for any reason, the Federal findings or disposition in the Integrated Quality Control System's (IQCS) data base conflicted with the finding letter which had been transmitted to the State agency, FCS *would* ensure the IQCS data base was correct. If the IQCS coding was incorrect, it *would* be corrected. If the finding letter was incorrect, it *would* be corrected. Either way, FCS *would* transmit a new finding letter to the State agency explaining what had occurred. There would be a new finding letter because the State agency would be entitled to know that a change in official error rates would be taking place.

If, in any of the five circumstances which have been specified, FCS were to make changes to the findings and dispositions of a case these changes would be made regardless of the effect on the amount of error in the case. A State agency would be notified of the change and entitled to arbitration of the new Federal findings or disposition, with one exception. If FCS changed the Federal findings or disposition to comply with the decision of a national arbitrator, the State agency would have no further right to arbitration. This is because the national arbitrator's decisions are final, with two exceptions. The first would be to implement a change in law or regulations. The other would be if FCS learned that it had not properly implemented the decision of the arbitrator.

Miscellaneous Technical Correction

FCS is taking advantage of the publication of this proposed rule to eliminate redundant regulatory language at 7 CFR 275.12(g)(2). Six of the 10 subparagraphs in this paragraph, which lists active cases which are eliminated from the sample universe during the review process, also appear at 7 CFR 275.11(f)(1). Therefore, FCS is proposing to (1) revise paragraph 275.12(g)(2) to reference § 275.11(f); (2) remove subparagraphs 275.12(g)(2) (i) through (iv), (vi) and (viii), and (3) renumber the remaining subparagraphs in 275.12(g)(2). These revisions parallel the proposed revisions to § 275.13(e), which lists negative cases which are eliminated from the sample universe during the review process. In addition, FCS is taking advantage of the publication of this proposed rule to eliminate obsolete regulatory language at 7 CFR 275.23(e)(5)(i). Section 13951(c)(4) of the Leland Act provides that Administrative Law Judges, in considering a State agency's appeal of quality control liability consider all grounds for denying the claim, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause. This provision was included in a final rulemaking published July 6, 1994 (59 FR 34553), and supersedes the regulatory language contained in 7 CFR 275.23(e)(5)(i) dealing with good cause requests and the timing of the issuance of billings. The Department is also proposing to move, without change, the regulatory language in 7 CFR 275.23(e)(5)(i) dealing with the methods of claim collection employed by FCS to 7 CFR 275.23(e)(8). With the removal of the language dealing with billings from 7 CFR 275.23(e)(5)(i), paragraph (e)(8) becomes the proper location for the provisions regarding the methods of bill collection to be employed by FCS.

Implementation

FCS proposes all provisions would be effective with the 1998 fiscal year, which begins with the October, 1997 sample month.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, parts 271 and 275 of Chapter II of Title 7 Code of Federal Regulations are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for Part 271 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definitions of ''Error'', ''Negative case'', ''Negative case error rate'', ''Quality control review'', and ''Review date'' are revised to read as follows:

§ 271.2 Definitions.

* * * * *

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

* * * * *

Negative case means a household whose application for food stamp benefits was denied or whose food stamp benefits were suspended or terminated by an action in the sample month.

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

* * * * *

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

* * * * *

Review date for quality control active cases means a day within the sample month, either the first day of the calendar or fiscal month or the day the household was certified, whichever is later. The ''review date'' for negative cases is the date of the agency's decision to deny, suspend, or terminate program benefits. For no case is the ''review

date'' the day the quality control review is conducted.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for Part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 275.3:

a. the introductory text of paragraph (c) is amended by revising the third sentence and adding a new sentence between the third and fourth sentences;

b. paragraph (c)(1)(i) introductory text is revised, and the table following the introductory text is removed;

c. paragraphs (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(i)(C) are redesignated as paragraphs (c)(1)(i)(C), (c)(1)(i)(D), and (c)(1)(i)(E), respectively, and new paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) are added;

d. newly redesignated paragraph (c)(1)(i)(C) is amended by removing the words ''n is the'' and adding in their place the words ''n' is the'';

e. paragraph (c)(3)(i) introductory text is revised, and the table following the introductory text is revised;

f. paragraph (c)(3)(i)(A), introductory text, is amended by removing the words ''n is the'' and adding in their place the words ''n' is the'';

g. paragraph (c)(3)(ii) is amended by adding the word '', suspend,'' between the words ''deny'' and ''or'';

h. a new paragraph (c)(6) is added.

The revisions and additions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * * FCS must validate the State agency's negative case error rate, as described in § 275.23(d), when the State agency's payment error rate for an annual review period appears to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2) of this chapter, and its reported negative case error rate for that period is less than two percentage points above the national weighted mean negative case error rate for the prior fiscal year. However, this requirement will not preclude the federal review of any negative case for other reasons as determined appropriate by FCS. * * *

(1) *Payment error rate.* * * *

(i) FCS will select a subsample of a State agency's completed active cases, as follows:

(A) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(ii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n′)
31,489 and over	n′=400.
10,001 to 31,488	n′=.011634 N+33.66.
10,000 and under	n′=150.

(B) For State agencies that determine their active sample sizes in accordance with § 275.11(b)(1)(iii), the Federal review sample for completed active cases is determined as follows:

Average monthly reviewable caseload (N)	Federal subsample target (n′)
60,000 and over	n′=400.
10,001 to 59,999	n′=.005 N+100.
10,000 and under	n′=150.

* * * * *

(3) *Negative case error rate.* * * *

FCS will select a subsample of a State agency's completed negative cases, as follows:

Average monthly reviewable negative caseload (N)	Federal subsample target (n′)
5,000 and over	n′=160.
501 to 4,999	n′=.0188 N+65.7.
Under 500	n′=75.

* * * * *

(6) *Changing Federal Findings.* Once FCS has notified a State agency of a Federal finding, FCS shall change that Federal finding only according to the following procedures:

(i) FCS shall change a Federal finding only if:

(A) FCS informally resolves with a State agency the differences between the State agency and Federal findings, and both parties agree on a single Federal finding. The informal resolution process should begin prior to the deadline for the State agency to request arbitration of a case, and may continue after the arbitration deadline, provided that arbitration of the case has been timely requested by the State agency; or

(B) An arbitrator's decision necessitates a change; or

(C) A change is the only way to implement a regulation or an amendment to the Food Stamp Act; or

(D) The change is solely attributable to the variance exclusion for incorrect written policy, as described at § 275.12(d)(2)(viii).

(ii) FCS shall notify the State agency that the Federal finding has changed.

(iii) The State agency shall be entitled to arbitration in accordance with paragraph (c)(4) of this section. However, if FCS changed the Federal finding or disposition based on a national arbitrator's decision, the State agency shall not be entitled to further arbitration.

(iv) If FCS enters a Federal finding into the data base at the National Computer Center but notifies the State agency of a different Federal finding for the same case, FCS shall ensure the IQCS data base contains the correct finding, notify the State agency of the discrepancy in the IQCS data base and the finding letter, and inform the State agency that it is entitled to arbitration in accordance with paragraph (c)(4) of this section.

* * * * *

§ 275.10 [Amended]

5. In § 275.10(a):

a. the second sentence is amended by adding the word '', suspended,'' between the words ''denied'' and ''or'';

b. the fifth sentence is amended by adding the word '', suspend,'' between the words ''deny'' and ''or''.

6. In § 275.11:

a. paragraph (a)(2)(iii) is removed, paragraph (a)(2)(iv) is redesignated as (a)(2)(iii) and a new paragraph (a)(2)(iv) is added;

b. paragraph (a)(3) is revised;

c. in paragraph (b)(1)(ii), the table is revised, and the text is amended by removing the reference to ''(a)(2)(viii)'' and adding in its place the reference to ''(a)(2)(iii)'';

d. in paragraph (b)(1)(iii), the table is revised, and the text is amended by removing the reference to ''(a)(2)(viii)'' and adding in its place the reference to ''(a)(2)(iii)'';

e. in paragraph (b)(1)(iv) the third sentence is amended by removing the word ''anticipated'';

f. paragraph (b)(2) is revised;

g. paragraph (b)(3) is revised;

h. the last sentence in paragraph (c)(1) is amended by adding the word '', suspension,'' between the words ''denial'' and ''or'';

i. paragraph (e)(2) is revised;

j. the introductory text of paragraph (f)(2) is revised;

k. paragraph (f)(2)(iv) is revised and paragraphs (f)(2)(v) through (f)(2)(ix) are added.

The additions and revisions read as follows:

§ 275.11 Sampling.

(a) *Sampling plan.* * * *

(2) *Criteria.* * * *

(iv) If the State agency has chosen a negative sample size as specified in paragraph (b)(2)(ii) of this section, include a statement that, whether or not the sample size is increased to reflect an

increase in negative actions as discussed in paragraph (b)(3) of this section, the State agency will not use the size of the sample chosen as a basis for challenging the resulting error rates.

(3) *Design.* FCS generally recommends a systematic sample design for both active and negative samples because of its relative ease to administer, its validity, and because it yields a sample proportional to variations in the caseload over the course of the annual review period. (To obtain a systematic sample, a State agency would select every kth case after a random start between 1 and k. The value of k is dependent upon the estimated size of the universe and the sample size.) A State agency may, however, develop an alternative sampling design better suited for its particular situation. Whatever the design, it must conform to commonly acceptable statistical theory and application (see paragraph (b)(4) of this section).

* * * * *

(b) *Sample size.* * * *

(1) *Active cases.* * * *

(ii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=2400.
10,000 to 59,999	n=300+[0.042 (N–10,000)].
Under 10,000	n=300.

(iii) * * *

Average monthly reviewable caseload (N)	Minimum annual sample size (n)
60,000 and over	n=1020.
12,942 to 59,999	n=300+[0.0153(N–12,941)].
Under 12,942	n=300.

* * * * *

(2) *Negative cases.*

(i) Unless a State agency chooses to select and review a number of active cases determined by the formulas provided in paragraph (b)(2)(ii) of this section and has included in its sampling plan the reliability certification required by paragraph (a)(2)(iv) of this section, the minimum number of negative cases to be selected and reviewed by a State agency during each annual review period shall be determined as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=800.
500 to 4,999	n=150+[0.144 (N–500)].
Under 500	n=150.

(ii) A State agency which includes in its sampling plan the statement required by paragraph (a)(2)(iv) of this section may determine the minimum number of negative cases to be selected and reviewed during each annual review period as follows:

Average monthly reviewable negative caseload (N)	Minimum annual sample size (n)
5,000 and over	n=680.
684 to 4,999	n=150+[0.1224 (N–683)].
Under 684	n=150.

(iii) In the above formulas, n is the required negative sample size. This is the minimum number of negative cases subject to review which must be selected each review period.

(iv) In the above formulas, N is the average monthly number of negative cases which are subject to quality control review (i.e., households which are part of the negative universe defined in paragraph (e)(2) of this section) during the annual review period.

(3) *Unanticipated changes.* Since the average monthly caseloads (both active and negative) must be estimated at the beginning of each annual review period, unanticipated changes can result in the need for adjustments to the sample size. FCS shall not penalize a State agency that does not adjust its sample size if the actual caseload during a review period is less than 20 percent larger than the estimated caseload initially used to determine sample size. If the actual caseload is more than 20 percent larger than the estimated caseload, the larger sample size appropriate for the actual caseload will be used in computing the sample completion rate.

* * * * *

(e) *Sample frame.* * * *

(2) *Negative cases.* The frame for negative cases shall list:

(i) all households whose applications for food stamps benefits were denied by an action in the sample month except those excluded from the universe in paragraph (f)(2) of this section. If a household is subject to more than one denial action in a single sample month, each action shall be listed separately in the sample frame; and

(ii) all households whose food stamp benefits were suspended or terminated by an action in the sample month except those excluded from the universe in paragraph (f)(2) of this section.

* * * * *

(f) *Sample universe.* * * *

(2) *Negative cases.* The universe for negative cases shall include all households whose applications for food stamps were denied or whose food stamp benefits were suspended or terminated by an action in the sample month except for the following:

* * * * *

(iv) A household which is under active investigation for Intentional Program Violation;

(v) A household which was denied, but subsequently certified within the normal 30 day processing standard, using the same application form;

(vi) A household which was suspended or terminated but the suspension or termination did not result in a break in participation that is the result of deliberate State agency action. There would be no break in participation if the household is authorized to receive its full allotment in the month for which the suspension or termination was effective other than continuation of benefits pending a fair hearing. Pro rated benefits are not considered to be a full allotment;

(vii) A household which has been sent a notice of pending status but which was not actually denied participation;

(viii) A household which was terminated for failure to file a complete monthly report by the extended filing date, but reinstated when it subsequently filed the complete report before the end of the issuance month.

(ix) Other households excluded from the negative case universe during the review process as identified in § 275.13(e).

* * * * *

7. In § 275.12:

a. paragraph (c)(1) introductory text is revised;

b. the first sentence of paragraph (f)(2) is amended by removing the reference to ''$5.00'' and adding in its place a reference to ''$10.00'';

c. paragraph (g)(2) introductory text is revised.

The revisions and additions read as follows:

§ 275.12 Review of active cases.

* * * * *

(c) *Field investigation.* * * *

(1) *Personal interviews.* Personal interviews shall be conducted in a manner that respects the rights, privacy, and dignity of the participants. Prior to conducting the personal interview, the reviewer shall notify the household that it has been selected, as part of an

ongoing review process, for review by quality control, and that a personal face-to-face interview will be conducted in the future. The method of notifying the household and the specificity of the notification shall be determined by the State agency, in accordance with applicable State and Federal laws. The personal interview may take place at an appropriate State agency certification office, at the participant's home, or at a mutually agreed upon alternative location. The State agency shall determine the best location for the interview to take place, but would be subject to the same provisions as those regarding certification interviews at 7 CFR 273.2(e)(2). These regulations provide that an office interview shall be waived under certain hardship conditions. Under such hardship conditions the quality control reviewer shall either conduct the personal interview with the participant's authorized representative, if one has been appointed by the household, or with the participant in the participant's home. Except in Alaska, when an exception to the field investigation is made in accordance with this section, the interview with the participant may not be conducted by phone. During the personal interview with the participant, the reviewer shall:

* * * * *

(g) *Disposition of case reviews.* * * *

(2) *Cases not subject to review.* Active cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in 275.11(f)(1), these shall include:

* * * * *

8. In § 275.13:

a. paragraph (a) is revised;

b. the first sentence of paragraph (b) is revised;

c. the third sentence of paragraph (b) is amended to add the word '', suspension,'' between the words ''denial'' and ''or'';

d. the first sentence of paragraph (c)(1) is amended by adding the word '', suspended,'' between the words ''denied'' and ''or'';

e. the second sentence of paragraph (c)(1) is amended by adding the word '', suspend,'' between the words ''deny'' and ''or'';

f. the first sentence of paragraph (c)(2) is amended by adding the word '', suspended,'' between the words ''denied'' and ''or'';

g. paragraph (e)(1) is amended by adding a heading to the paragraph;

h. paragraph (e)(2) is revised;

i. the first sentence of paragraph (f) is amended by adding the words ''suspended or'' between the words ''been'' and ''terminated''.

The addition and revisions read as follows:

§ 275.13 Review of negative cases.

(a) *General.* A sample of households whose applications for food stamps benefits were denied or whose food stamp benefits were suspended or terminated by an action in the sample month shall be selected for quality control review. These negative cases shall be reviewed to determine whether the State agency's decision to deny, suspend, or terminate the household, as of the review date, was correct. For negative cases, the review date shall be the date of the agency's decision to deny, suspend, or terminate program benefits. The review of negative cases shall include a household case record review; an error analysis; and the reporting of review findings, including procedural problems with the action regardless of the validity of the decision to deny, suspend or terminate.

(b) *Household case record review.* The reviewer shall examine the household case record and verify through documentation in it whether the reason given for the denial, suspension, or termination is correct or whether the denial, suspension, or termination is correct for any other reason documented in the casefile. * * *

* * * * *

(e) *Disposition of case review.* * * *

(1) *Cases reported as not complete.* * * *

(2) *Cases not subject to review.* Negative cases which are not subject to review, if they have not been eliminated in the sampling process, shall be eliminated in the review process. In addition to cases listed in § 275.11(f)(2), these shall include:

(i) A household which was dropped as a result of a correction for oversampling;

(ii) A household which was listed incorrectly in the negative frame.

* * * * *

9. In § 275.23:

a. paragraph (c)(4) is amended by adding the word '', suspension,'' between the words ''denial'' and ''or'';

b. paragraph (e)(5)(i) is amended by removing everything but the first sentence;

c. the introductory text of paragraph (e)(7)(iii) is amended by removing the word ''all'' and adding in its place the words ''98 percent''.

d. paragraph (e)(8) is revised.

The revision reads as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(8) *FCS Timeframes.* FCS shall notify State agencies of their payment error rates and payment error rate liabilities, if any, within nine months following the end of each fiscal year reporting period to which they pertain. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year reporting period in which the claim arose unless an appeal relating to the claim is pending. Such appeals include arbitration cases, requests for good cause waivers, and administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FCS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability. FCS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FCS and FCS determines that, as a result, it is unable to calculate a State's payment error rate and payment error rate liability within the prescribed timeframe.

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Dated: August 28, 1996.

Ellen Haas,

Under Secretary, Food, Nutrition, and Consumer Services.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 322

[INS No. 1712–95]

RIN 1115–AE07

Children Born Outside the United States; Application for Certificate of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service (the Service) is proposing to amend its regulations relating to the naturalization of children born to or adopted by United States citizens abroad. This rulemaking is necessary to incorporate changes to the citizenship transmission requirements