DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AC39

Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This rulemaking proposes to amend Food Stamp Program regulations to implement 13 specific sections of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that add new eligibility requirements, increase existing penalties for failure to comply with Program rules, and establish a time limit for food stamp participation of three months in three years for able-bodied adults without children who are not working. The Department's proposals would: prohibit an increase in food stamp benefits when a household's income is reduced because of either a penalty imposed under a Federal, State, or local means-tested public assistance program for failure to perform a required action or for an act of fraud; allow State agencies to disqualify an individual from participation in the Program if the individual is disqualified from another means-tested program for failure to perform an action required by that program; allow State agencies to sanction Program households if they are sanctioned under TANF for failure to ensure their minor children attend school, or if the adults do not have (or are not working toward attaining) a secondary school diploma or its equivalent; make individuals convicted of drug-related felonies ineligible for food stamps; make fleeing felons and probation and parole violators ineligible for food stamps; require States to provide households' addresses, social security numbers, or photographs to law enforcement officers to assist them in locating fugitive felons or probation or parole violators; allow States to require food stamp recipients to cooperate with child support agencies as a condition of food stamp eligibility; allow states to disqualify individuals who are in arrears in court-ordered child support payments; double the penalties for violating Program requirements; permanently disqualify individuals convicted of trafficking in food stamp benefits of $500 or more; make individuals ineligible for 10 years if they misrepresent their identity or residence in order to receive multiple Program benefits; and limit the Program participation of most able-bodied adults without dependents to three months in a three-year period during times the individual is not working or participating in a work program.

DATES: Comments must be received on or before February 15, 2000 to be assured of consideration.

ADDRESSES: Comments should be submitted to Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486. The Internet address is: Margaret.Batko@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Margaret Werts Batko at the above address or by telephone at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program (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.

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.

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). Shirley R. Watkins, Under Secretary, Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact or affect 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

The information collection burden associated with the proposed provisions in this rule concerning eligibility, certification, and continued eligibility of food stamp recipients (OMB No. 0584–0064) was published in the **Federal Register** for public comment on January 5, 1999, Volume 64, No. 2, Page 472. The information collection burden associated with the request for a waiver under the food stamp time limit is approved under OMB No. 0584–0479. The information collection burden that is associated with proposed provisions in this rule which affect the regulations at 7 CFR 273.16, the Demand Letter for Over Issuance, is approved under OMB 0584–0492.

In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service is submitting for public comment the change in the information collection burden that would result from the adoption of the proposals in the rule associated with the State Plan of Operations.

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 the information to be collected; and (c) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments and requests for copies of this information collection to Margaret Werts Batko, Assistant Branch

Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2516. Comments may also be faxed to the attention of Ms. Batko, at (703) 305–2486. The Internet address is Margaret.Batko@FNS.USDA.GOV.

Comments and recommendations on the proposed information collection must be received by February 15, 2000.

Title: State Plan of Operations.

OMB Number: 0584–0083.

Expiration Date: December 1998—Emergency reinstatement has been requested.

Type of Request: Expired/Revision of currently approved collection.

Abstract: The regulations at 7 CFR 272.2 require that State agencies plan and budget program operations and establish objectives for each year. State agencies submit these plans to the regional offices for review and approval. This rulemaking is proposing to amend Part 7 CFR 272.2(d) of the Food Stamp Program Regulations to require State agencies who opt to implement certain provisions of the PRWORA to include these options in the State Plan of Operation. The optional provisions that must be included in the State Plan of Operation are: school attendance, secondary school diploma, comparable disqualifications, custodial and non-custodial parents, cooperation with child support enforcement agencies, disqualification for child support arrears. The regulations at 7 CFR 272.2(f) require that State agencies only have to provide FNS with changes to these plans as they occur. Since these options are newly provided for by PRWORA, State agencies who choose these options must include it in their State Plan of Operations this year, and any subsequent year only if there are changes. Four States have opted to sanction households if the adult fails to ensure children attend school; 13 States have opted to implement comparable disqualifications; 7 States have opted to disqualify individuals who fail to cooperate with child support agencies; 3 States have opted to disqualify individuals if they are in arrears on child support; 7 States have opted to not increase benefits if the household does not comply with requirements of other federally means tested benefits. No State has opted to disqualify adults who have not attained a secondary school diploma.

Number of Additional Respondents: 34.

Estimated Number of Responses per Respondent: A one time burden of one response per State agency.

Estimate of Burden: The additional public reporting burden for this proposed collection of information is estimated to average an additional .25 hours per response.

Estimated Total Annual Burden on Respondents: An additional one time burden of 8.5 hours.

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FCS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 or more in any one year. This rule is, therefore, not subject to the requirements of Sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes required to be implemented by law have been implemented.

All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.'' Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6

Regulatory Impact Analysis

Need for Action

This action is needed to implement 13 sections of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, and would: (1) prohibit an increase in food stamp benefits when a household's income is reduced because of a penalty imposed under a Federal, State, or local means-tested public assistance program for failure to perform a required action; (2) prohibit an increase in food stamp benefits when a household's income is reduced because of a penalty imposed under a Federal, State, or local means-tested public assistance program for an act of fraud; (3) allow states to disqualify an individual from Program participation if the individual is disqualified from another means-tested program for failure to perform an action required by that program; (4) allow State agencies to sanction households if minor children are not attending school, or if the adults do not have (or are not working toward attaining) a secondary school diploma or its equivalent; (5) make individuals convicted of drug-related felonies ineligible to receive food stamps; (6) make fleeing felons and probation and parole violators ineligible to receive food stamps; (7) require States to provide households' addresses, social security numbers, or photographs to law enforcement officers to assist them in locating fugitive felons or probation or parole violators; (8) allow States to require food stamp recipients to cooperate with child support agencies as a condition of food stamp eligibility;

(9) allow States to disqualify individuals who are in arrears in court-ordered child support payments; (10) double existing penalties for violating Program requirements; (11) permanently disqualify individuals convicted of trafficking in food stamp benefits of $500 or more; (12) make individuals ineligible for 10 years if they misrepresent their identity or residence in order to receive multiple food stamp benefits; and (13) limit the Program participation of most able-bodied adults without dependents to three months in a three-year period during times the individual is not working or participating in a work program.

Benefits

State agencies will benefit from this rule to the extent that it allows States to implement provisions that will encourage personal responsibility and promote self-sufficiency.

Costs

The changes in food stamp requirements made by the provisions addressed in this rule would reduce Program costs for FY 1999–2003 by approximately $2.090 billion. For FY 1999–2003, the estimated yearly savings are (in millions) $615, $515, $395, $290, $275, respectively. The majority of the savings are realized from Section 824, time limited benefits for able-bodied adults without dependents. Smaller savings are realized from the following provisions: Section 819, comparable disqualifications; Section 822, cooperation with child support agencies; Section 823, disqualifications for child support arrears; and Section 829 and 911, no increase in benefits. The savings from the remaining provisions in the rule are negligible, and therefore, will not be discussed in this analysis.

Section 824—Time Limits for Able-Bodied Adults without Dependents—This provision limits the receipt of food stamps for certain able-bodied adults without dependents (ABAWDs) to 3-months in a 36 month period unless the individual is either working or participating in an approved work or work training program for at least 20 hours per week. Individuals are exempt from the time limit if they are under 18 or over 50, medically certified as physically or mentally unfit for employment, a parent or other household member with responsibility for a dependent child, or exempt from work registration under 6(d)(2) of the Act, or pregnant. Individuals can regain eligibility if they work 80 hours in a 30 day period, and they maintain eligibility as long as they are satisfying the work requirement. If individuals later lose their job, they can receive an additional 3 months of food stamps while not working. The additional 3 months must be consecutive, and begins on the date the individual notifies the State that he/she is no longer working. The law allows waivers of the time limit for groups of individuals living in areas with an unemployment rate of more than 10 percent or where there are not a ''sufficient number of jobs to provide employment for the individuals.''

This provision affects participants to the extent they are able-bodied adults without dependents and to the extent they are not fulfilling the work requirement, exempt or covered by a waiver. We estimate that 412,000 individuals will reach the time limit in FY 1999 due to this provision. We estimate that in FY 2000–2003 the number of individuals reaching the time limit will be (in thousands) 331, 239, 160, and 140 respectively. We estimate that the FY 1999–2003 cost savings from this provision will be (in millions) $585, $485, $360, $250, $225. We estimate that the five-year cost savings for FY 1999 through FY 2003 will be $1.905 billion. These estimates do not take into account any changes in the treatment of ABAWDs resulting from the subsequent Balanced Budget Act of 1997 or Agricultural Research, Extension, and Education Reform Act of 1998.

The caseload estimates were generated by identifying those participants in the 1996 food stamp quality control data who are ABAWDs, expressing the able-bodied population as a percentage of the total Food Stamp caseload, and separating out to the extent possible those participants who were exempt from the work requirements. Further adjustments were made to account for the estimated size of the able-bodied population living in areas that had been granted 10 percent unemployment and insufficient jobs waivers (in 1999 approximately 35 percent of the ABAWD caseload have been estimated to live in waived areas and are exempt from the work requirement), and the number of able-bodied who might retain eligibility either through work or an approved work or training program. About 315,000 people in 1999 have been estimated to be ABAWDs who live in a waived area and will not run into the time limit. Cost estimates were then derived by multiplying the appropriate caseload estimates by the average benefit for a single able-bodied Food Stamp recipient over the course of one year.

Subsequent to the passage of this law, the Balanced Budget Act of 1997 and the Agricultural Research Extension, and Education Reform Act of 1998 (Agricultural Research Act) modified the ABAWD provisions of PRWORA. The Balanced Budget Act increased funding to the Food Stamp Employment and Training Program to allow states to create qualifying work opportunities to help ABAWDs retain their Food Stamp eligibility, and permitted states to exempt up to 15 percent of their unwaived able-bodied caseload from the time limits. The Agricultural Research Act further modified the level of funding for Employment and Training Programs for ABAWDs. Taken together both of these laws will likely mitigate the effects of the ABAWD provisions of PRWORA. The effects of these more recent laws will be addressed in future rulemaking.

Section 822—Cooperation With Child Support Agencies—This provision allows States to require cooperation with child support agencies as a condition of food stamp eligibility. The provision is optional and can be waived for the custodial parent for good cause but not for the non-custodial parent. This provision affects participants to the extent States choose to implement this provision and to the extent they are a custodial or non-custodial parent with child support responsibilities and do not cooperate with child support agencies. We estimate the number of recipients affected by this provision in FY 1999–2003 will be (in thousands) 76, 92, 105, 119, 132 respectively. We estimate the cost savings from this provision in FY 1999–2003 will be (in millions) $15, $15, $15, $20, $25, respectively. We estimate the total cost savings for the 5-year period of FY 1999–2003 will be $90 million.

Custodial Parents

We estimate that in FY 1999 approximately 4,000 custodial parents will be disqualified due to sanctions for noncompliance and 68,000 custodial parents will have their benefits slightly reduced due to compliance and increased child support income as a result of this provision. We estimate the FY 1999 cost savings for the custodial parents to be $10 million and the five-year cost savings for FY 1999 through FY 2003 to be $60 million.

Because food stamp households receiving public assistance are already mandated to cooperate with child support agencies, the impact of this provision is expected to be realized among food stamp-only custodial-parent households. Based on the February 1995 FNS report, Participation in the Child Support Enforcement Program Among Non-AFDC Food Stamp Households,

food stamp-only custodial households with child support needs that are not cooperating with the child support agencies account for roughly 2.8 percent of all participating food stamp households. According to the report, the response of these custodial parents to this provision was assumed to fall into three categories: (1) those that comply and receive higher child support payments; (2) those that do not comply and face sanctions, and; (3) those that opt to leave food stamps rather than comply.

First, in the 1995 report, custodial parents choosing to comply with the provision were found to account for approximately 8.5 percent of food stamp benefits and were expected to experience a decline in food stamp benefits of 2.0 percent as a result of higher child support payments. Savings from this group was calculated as the proportion of total food stamp benefits contributed to this group (8.5 percent) times the expected decline of 2.0 percent (0.085 times 0.02 = .00170 or 0.17 percent).

Second, to estimate the cost for households which are sanctioned for noncompliance, the report indicated that food stamp-only custodial households accounted for 7.0 percent of all food stamp households, and that approximately 2.1 percent of such households would choose to be sanctioned rather than comply with the provision. The total number of participating households was calculated by dividing a participation projection (21,638,000 persons) by the average household size from 1996 food stamp quality control data (2.5 persons). The monthly benefit reduction for those sanctioned and leaving food stamps rather than comply was estimated to be the difference between the maximum allotment for a family of four and the maximum allotment for a family of three (difference = $87). The savings for this group was calculated as the product of total households, the proportion which are food stamp-only custodial households (7.0 percent), the proportion choosing to be sanctioned rather than comply with the provision (2.1 percent), and the annual value of the sanction (e.g., in FY 1999, 8,655 households times 7 percent times 2.1 percent times $87 times 12 months).

Third, the 1995 report indicated that of food stamp-only custodial households, 3.8 percent were expected to leave the Food Stamp Program rather than comply with the provision. The estimate of savings from the group of custodial parents choosing to leave food stamps rather than comply was calculated as the product of the number of total food stamp households, the proportion which are food stamp-only custodial households (7.0 percent), the proportion choosing to leave food stamps rather than comply (3.8 percent), and the annual value of the household benefit reduction (e.g., in FY 1999, 8,655 households times 7 percent times 3.8 percent times $87 times 12 months).

The three group impacts were summed and the estimate was adjusted pursuant to assumptions regarding the proportion of food stamp recipients in States choosing to adopt this optional provision—10 percent in FY 1997 and growing to 20 percent by FY 2003. State option data were based on the May 1998 FNS report, State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50–State Survey. Seven States reported having adopted this optional provision as of the end of calendar year 1997: Idaho, Kansas, Maine, Michigan, Mississippi, Ohio and Wisconsin. According to 1996 food stamp quality control data, these seven States account for approximately 10 percent of applicable food stamp households.

The estimate of the number of custodial parents disqualified for food stamp benefits from this provision (4,000 people) was calculated as the total unrounded savings ($4.5 million) attributable to the second and third groups of custodial parents—those continuing to not cooperate with child support agencies—divided by the annual value of their sanction ($87 times 12 months).

The estimate of the number of custodial parents receiving reduced benefits as a result of complying with this provision and receiving increased child support income (68,000 persons) was calculated as the difference between the total number of custodial parents affected by the provision (72,000 persons) and those being disqualified for noncompliance (4,000 people). The total number of custodial parents affected was estimated as the total target population of the provision—2.8 percent of all households according to the 1995 report—times the projected number of participants from the FY 1999 budget baseline, times the State option phase-in assumptions.

Non-Custodial Parents

We estimate that approximately 4,000 non-custodial parents will be disqualified by this provision in FY 1999. We estimate the FY 1999 cost savings for non-custodial parents to be $5 million and the five-year cost savings for FY 1999 through FY 2003 to be $30 million.

Estimates of the savings attributable to the non-custodial parents in this provision are based on information from a 1995 report, Non-custodial Fathers: Can They Afford to Pay More Child Support, by Elaine Sorenson at the Urban Institute. Data on non-custodial parents is extremely limited and this was the best available information. The number of non-custodial parents not cooperating with child support was estimated to be more than 78,000 in 1990. This estimate was based on the reported 5.9 million fathers in 1990 who were not paying support, adjusted by 75 percent to account for those at low-income levels, times the proportion estimated to represent non-custodial fathers receiving food stamps who had no child support order—a proxy for non-cooperation (1.77 percent which is derived from the 1995 Urban Institute report) [5.9 million times 0.75 times 0.0177 = 78,323]. The estimate of the number of non-custodial parents not cooperating with their child support agency was inflated by 1.5 percent annually to account for growth in the child support system. This inflation factor is consistent with information from the Department of Health and Human Services on the child support system. The savings were estimated as the product of the number of non-custodial parents not cooperating and an estimated average food stamp benefit per person ($76.41 per month times 88,891 persons times 12 months).

The savings estimate for non-custodial parents was adjusted for the proportion of households in States choosing to adopt this optional provision and assumptions regarding the percent of non-cooperating non-custodial parents States are able to identify and sanction. The State option assumptions were based on the May 1998 FNS report, State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50–State Survey. Three States reported having adopted this provision at the end of calendar year 1997: Maine, Mississippi, and Wisconsin. According to 1996 quality control data, these three States account for roughly 5 percent of all applicable households. Therefore the savings estimate in FY 1997 assumes only these States implement this child support provision, thereby effecting 5 percent of all households that could be subject to this provision, and further assumes a gradual expansion of the States selecting this option so that 10 percent of all households are subject to this provision by FY 2003. The estimate was adjusted further based on the assumption that, operating at maximum effectiveness,

States would only be able to correctly identify and sanction 75 percent of applicable offenders.

The estimate of the number of non-custodial parents disqualified for food stamp benefits from this provision was calculated as the total unrounded savings from non-custodial parents ($3.668 million) divided by an estimated average annual food stamp benefit ($916.92 = $76.41 times 12 months).

Summing together the estimates for both custodial and non-custodial parents, we estimate that 8,000 people will be disqualified as a result of complying and receiving additional income from child support in FY 1999. 68,000 custodial parents will have benefits reduced due to higher amounts of child support income as a result of this provision. We estimate the FY 1999 cost savings to be $15 million and the five-year cost savings for FY 1999 through FY 2003 to be $90 million.

Section 823—Disqualification for Child Support Arrears: This provision allows States to disqualify individuals for any month during which they are delinquent in any court-ordered child support payment. This provision is optional. This provision affects participants to the extent States choose to implement this provision and to the extent they have court-ordered child support responsibilities and they are delinquent in their payments. We estimate that approximately 3,000 persons will be disqualified as a result of this provision in FY 1999. We estimate the FY 1999 cost savings to be $5 million and the five-year cost savings for FY 1999 through FY 2003 to be $25 million.

The estimate of savings for this provision was based on the 1995 report, Non-Custodial Fathers: Can They Afford to Pay More Child Support, by Elaine Sorenson at the Urban Institute. There were an estimated 825,000 custodial mothers participating in the child support system (in IV–D programs) with child support orders not receiving support in 1990. It was assumed that for every custodial mother with an order and without support, there was a non-custodial father in arrears. Estimating that almost 7 percent (the national average of 1 in 14 Americans receiving food stamps) of them were receiving food stamp benefits, it was calculated that in 1990 there were more than 56,000 non-custodial fathers receiving food stamps who were in arrears for court-ordered child support. This number was inflated by 1.5 percent per year to reflect growth in the child support system, consistent with information from the Department of Health and Human Services. The estimate of savings for this provision was based on an estimated average monthly benefit per person ($76.41). The total savings was calculated as the product of the number of non-custodial fathers in arrears for child support times the annual benefits they would lose due to disqualification (64,883 people times $76.41 per month times 12 months).

This product was adjusted for assumptions regarding the proportion of food stamp households in States choosing to implement this provision and the State's ability to identify and sanction the appropriate individuals. The State option assumptions were based on the May 1998 FNS report, State Food Stamp Choices Under Welfare Reform: Findings of 1997 50–State Survey, indicating that three States reported operating this provision at the end of 1997: Ohio, Oklahoma and Wisconsin. According to 1996 food stamp quality control data, these three States account for approximately 5 percent of all applicable households. The savings estimate was adjusted to reflect that 5 percent of the States would implement this provision in FY 1997, growing to 10 percent by FY 2003. The estimate was adjusted further based on the assumption that, operating at maximum effectiveness, States would only be able to correctly identify and sanction 75 percent of applicable offenders. In FY 1999, for example, the savings was calculated by taking the product of the 5 percent state phase-in and the assumption of 75 percent cooperation and multiplying it by the total savings. The estimate of the number of individuals disqualified for food stamp benefits from this provision was calculated as the total unrounded savings ($2,667,000) divided by an estimated average annual food stamp benefit ($916.92).

Section 829 and 911—No Increase for Penalties in Other Programs—Section 829 provides that if a household's benefits are reduced under a Federal, State, or local means-tested public assistance program for failure to perform a required action, the household may not receive an increased food stamp allotment as a result of the decrease in income due to the reduced public assistance payment. This applies to both intentional and unintentional failures to take a required action. In addition to not increasing allotments, States may reduce the Food Stamp allotment by up to 25 percent. Section 911 prohibits an increase in food stamp benefits as the result of a decrease in Federal, State, or local means-tested assistance benefits because of fraud. Participants will be affected by these provisions to the extent their benefits are reduced for failure to perform a required action or for fraud. The effect of the provisions also depends on the cooperation of other programs in notifying the food stamp agency. We estimate approximately 6,000 participants will be affected by these provisions in FY 1999. We estimate that in FY 1999–2003 the number of recipients affected by this provision will be (in thousands) 6,6,6,7,7 respectively. We estimate the cost savings for FY 1999–2003 to be (in millions) $5, $5, $10, $10, $10. We estimate the five-year cost savings for FY 1999 through FY 2003 to be $25 million.

Food stamp savings from these provisions results from two sources: (1) a mandatory prohibition on increasing food stamp benefits when individuals receive lower benefits in other means-tested programs for failure to comply with a required action, and (2) an optional provision to decrease food stamp benefits by no more than 25 percent.

The estimate for savings from the mandatory prohibition on increasing benefits was based on the Department of Health and Human Services' Administration for Children and Families data regarding the average number of people sanctioned monthly from the JOBS program in May 1994. This serves as a proxy for the number of individuals that receive reduced benefits from a means-tested program for failure to perform a required action or for fraud, and is the best available data. (Data on fraud in other programs is unavailable.) There were almost 13,000 monthly first sanctions, 1,876 monthly second sanctions and 375 monthly third sanctions. First sanctions were assumed to result in instant compliance and therefore last zero months in duration. This assumption is based on 1994 information from the Department of Health and Human Service, Administration on Children and Families (ACF). ACF does not have any more recent information. Second sanctions were assumed to have an average duration of three months and third sanctions were assumed to have an average duration of six months. The savings from the mandatory prohibition on increasing food stamp benefits was calculated as the sum of the products of the number of individuals sanctioned, the average AFDC benefit lost times the FSP benefit reduction rate of 30 percent, and the duration of the sanction. The average AFDC benefit reduction was taken from the average AFDC benefit per person reported in the 1996 Green Book and inflated over time. [(1,876 monthly second sanctions times 12 months times

the average AFDC benefit lost which equals $143 times 30 percent FSP benefit reduction times 3 months) plus (375 monthly third sanctions times 12 months times the average AFDC benefit lost which equals $143 times 30 percent FSP benefit reduction times 6 months)]

The estimate for savings from the State option to decrease food stamp benefits by no more than 25 percent was based on an estimated average monthly food stamp benefit per person and the JOBS sanction data. The savings was calculated as the product of the number of individuals sanctioned, 25 percent of the average food stamp benefit per person and the duration of the sanction. This estimate was adjusted to account for the proportion of food stamp households in States expected to exercise this optional provision—10 percent in 1997 and growing to 20 percent by 2003. This was based on information provided in the May 1998 FNS report, State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50-State Survey. Seven States reported having adopted this optional provision at the end of 1997: Connecticut, Iowa, Kentucky, Michigan, Mississippi, Montana and Tennessee. According to 1996 food stamp quality control data, these seven States account for approximately 10 percent of all food stamp cash assistance households.

The savings estimates for the mandatory and optional portions of the provisions were summed. The estimate of the number of individuals receiving a reduction in food stamp benefits due to these provisions was calculated as the total unrounded savings divided by an estimated average annual food stamp benefit. [(1,876 monthly second sanctions times 12 months times the average AFDC benefit lost which equals $143 times 30 percent FSP benefit reduction times 3 months) plus (375 monthly third sanctions times 12 months times the average AFDC benefit lost which equals $143 times 30 percent FSP benefit reduction times 6 months) plus the sum of (1,876 times 12 months times the average FSP benefit per AFDC household which equals $259.96 times .25 reduction times 3 months) and (375 times the average FSP benefit per AFDC household which equals $259.96 times .25 reduction times 6 months)]

Background

On August 26, 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA), was enacted. PRWORA amended the Food Stamp Act of 1977 7 U.S.C. 2011, *et seq.* (The Act), by adding new Food Stamp Program (the Program) eligibility requirements, increasing existing penalties for failure to comply with Program rules, and establishing a time limit for Program participation of three months in three years for able-bodied adults without children who are not working. Thirteen sections of the PRWORA are addressed in this rulemaking. State agencies were required to implement most of these provisions upon enactment for applicant households and at recertification of participant households. Some of these provisions were required to be implemented at dates of enactment, and those instances are discussed below. The requirements of each provision are discussed below.

The Department is proposing to codify many of the new provisions in 7 CFR 273.11, ''Action on Households with Special Circumstances''. The proposed new or increased penalties will amend 7 CFR 273.16. Because of the complexity of the new food stamp time limit for able-bodied adults, the Department is proposing to add a new regulatory section to codify these requirements, 7 CFR 273.24. The discussion below follows this organizational structure.

7 CFR 273.11—Action on Households with Special Circumstances

Ban on Increased Benefits for Failure to Take Required Action or Fraud—7 CFR 273.11(k)

Current regulations at 7 CFR 273.11(k) provide that a State agency shall not increase food stamp benefits when benefits received under another means-tested Federal, State or local welfare or public assistance program have been decreased due to an intentional failure to comply with a requirement of the program that imposed the benefit decrease. This provision does not apply in the case of individuals or households subject to a food stamp work sanction imposed under 7 CFR 273.7(g)(2). If the other program will not cooperate in providing information sufficient to enforce 7 CFR 273.11(k), the State agency is not held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information.

Section 829 of PRWORA amended Section 8(d) of the Act, 7 U.S.C. 2017(d), to provide that if the benefits of a household are reduced under a Federal, State, or local law relating to a means-tested public assistance program for the failure of a person to perform an action required under the law or program the household may not receive an increased allotment as the result of that decrease, and the State agency may reduce the household's food stamp allotment by not more than 25 percent. This provision applies whether or not the act leading to the decrease in benefits was intentional. The prohibition on increasing food stamp benefits is applicable for the duration of the reduction imposed by the other program. If the reduction is the result of a failure to perform an action required under part A of title IV of the Social Security Act, 42 U.S.C. 601, *et seq.* (Temporary Assistance for Needy Families (TANF)), the State agency may use the rules and procedures that apply under part A of title IV to reduce the food stamp allotment.

The Department proposes to amend 7 CFR 273.11(k)(1) to provide that a ''means-tested public assistance program'' for purposes of the restriction imposed by Section 829 of PRWORA shall include any public or assisted housing under Title I of the United States Housing Act of 1937, any State program funded under part A of Title IV of the Social Security Act, and any program for the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act, and State and local general assistance as defined in 7 CFR 271.2. Title XIX was not included because Medicaid benefits are not counted as income for food stamp purposes. The Department also proposes that ''reduced'' will mean decreased, suspended, or terminated.

The Department would like to point out that the requirement of the assistance program does not have to be comparable to a food stamp program requirement.

The Department plans to retain the current requirement at 7 CFR 273.11(k) which provides that this restriction must be applied to all applicable cases. In addition, the Department proposes to retain the current provision that if a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information. However, the Department expects the State agency to act on information that it has available, such as information on TANF participants. The Department proposes that the State agency obtain information about sanctions and changes in those sanctions directly from the assistance programs and not rely on the households to provide the information. This may be done through computerized listings or other means. The Department

does not propose changing the reporting requirements for households.

The Department proposes that the restriction imposed by Section 829 only apply if assistance benefits are reduced for failure of a member of a household to perform an action required under a Federal, State, or local law relating to a means-tested public assistance program if the person was receiving such assistance at the time the reduction was imposed. In other words, the prohibition imposed by Section 829 would not apply to a failure to take an action at the time of initial application for an assistance program. If the person was not already participating, benefits could not be ''reduced.'' With the following exceptions, this provision would apply to reductions imposed during the period benefits were originally authorized by the other program and to reductions imposed at the time of application for continued benefits if there is no break in participation. The Department does not consider reaching a time limit for time-limited benefits or having a child that is not eligible because of a family cap as failures to perform an action required by an assistance program. The person or persons simply no longer meet the eligibility criteria for assistance. Further, the Department does not intend this provision to apply to purely procedural requirements such as failure to submit a monthly report or failure to reapply for assistance.

The Department is proposing that the household member does not have to be certified for food stamps at the time of the failure to perform a required action for this provision to apply. If a reduction in the assistance benefits is in force at the time of the food stamp application, food stamp benefits would be computed in a manner that would prevent a higher food stamp allotment as a result of the failure to take the required action.

The Department proposes to give States flexibility in determining how to prevent an increase in food stamp benefits. For example, the State may compute the exact amount of assistance the household would have received each month but for the penalty. Or, the State may determine the amount of the decrease at the time it was first imposed and attribute that amount as additional assistance without regard to other changes in household circumstances for the duration of the penalty. For example, a household's original grant is reduced by $50. No matter what the grant is in subsequent months, the State will increase it by $50 to find out what the grant should have been. As an alternative, the State agency may increase the actual assistance received on an individual case basis by the same percentage as the original reduction. For example, if the original grant of $100 is reduced by 25 percent to $75, no matter what the grant is in subsequent months, the State agency will increase it by 25 percent to find out what the grant should have been. Finally, instead of computing each reduction on an individual case-by-case basis, the State agency may choose to increase the assistance grant of all households that fail to perform a required action by the same flat percent, not to exceed 25 percent. For example, for all households that fail to perform a required action, no matter what their actual individual percentage decrease is, the State agency may choose to increase everyone's actual assistance grant by 25 percent.

Section 8(d)(1)(A) of the Act, as amended by Section 829 of PRWORA, provides that the household may not receive an increase in food stamp benefits and Section (8)(d)(1)(B) provides that State agencies may reduce the food stamp allotments by not more than 25 percent. The Department interprets these sections to mean that the State agency must prevent an increase in food stamp benefits and, in addition, it may reduce the food stamp allotment by up to 25 percent. If the State agency opts, under the flexibility discussed in the preceding paragraph, to use a flat percentage to prevent an increase in food stamp benefits for all households that contain a member who failed to take a required action, the Department believes that that percentage should also not be more than 25 percent.

If a percentage is computed for an individual case, the percentage must be applied to the assistance payment before any amount is recouped to repay a prior assistance overissuance. Likewise, if a percentage is used as a standard measure of reduction, it must be applied to the food stamp allotment before any amount is recouped to repay a prior food stamp overissuance.

Section 829 of the PRWORA also amended Section 8(d)(2) of the Act to provide that if benefits are reduced for a failure of an individual to perform an action required under a program under Title IV–A of the Social Security Act (TANF), the State agency may use the TANF rules and procedures to reduce the food stamp allotments. Under the TANF program, households are sometimes sanctioned for 30 percent of the grant. The Department interprets the reference to use of TANF rules and procedures to apply only to procedural aspects such as budgeting procedures and combined notices and hearings. The Department does not interpret it as allowing a percentage reduction greater than 25 percent even though the TANF reduction may be more than 25 percent.

A number of States have expressed concern about indefinite and permanent penalties. An indefinite penalty may occur, for example, when a person is determined to be ineligible for a particular program for 2 months or until he or she complies with a certain requirement. In some cases the person may not reapply for the other assistance program or may not be given an opportunity to cure the violation because they may become ineligible for some other reason, such as having children reach the age of 18. Also, some assistance programs only keep records for a limited time and may be unable to provide the food stamp office with the information necessary to enable it to prohibit an increase in food stamp benefits. The Department believes that a stricter penalty should not be imposed for a failure to perform a required action in another program than the penalty imposed for the first time a person commits an intentional food stamp program violation. In most cases the penalty for the first food stamp violation is a 1-year disqualification. Therefore, if the other assistance program assigns a disqualification period of longer than one year or an indefinite or permanent disqualification period, the Department proposes that that the maximum length of the food stamp disqualification under Section 8(d) of the Act be no more than one year. Further, the Department proposes that the State agency be allowed to shorten the disqualification period to less than one year if the State becomes aware that the person would be ineligible for assistance for some other reason.

If an individual fails to perform a required action in a State or local assistance program, and the individual moves within the State, the Department proposes that the disqualification goes with that person, but that it be terminated if the person is ineligible for the assistance program for some other reason or if the individual moves out of State. If an individual fails to perform a required action in a Federal program, and the individual moves, either interstate or intrastate, the Department is proposing that the State verify the status and continue the disqualification if appropriate.

The introductory paragraph of 7 CFR 273.11(k) currently provides in part that the prohibition on increasing food stamp benefits does not apply in the case of individuals or households subject to the food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2).

Some State agencies have advised that this provision is confusing and difficult to administer, especially when another program's penalty is for a longer period of time. For example, a person could have a 2-month food stamp disqualification and a 6-month TANF disqualification for the same violation. The question is should the person be disqualified for food stamp purposes for 2 months and at the same time have an amount attributed as income as the result of the TANF reduction or should the person be disqualified for 2 months and then have an amount attributed as income for the remaining 4 months in order to prevent an increase in benefits as the result of the TANF decrease. The law provides for both a disqualification for food stamp purposes and prohibits an increase in food stamp benefits for the duration of the reduction in the other assistance program. Therefore, the Department is proposing that the person be disqualified for food stamp purposes and the State agency prohibit an increase in food stamps as the result of the reduction in assistance for the duration of the reduction in assistance even if there is some overlap. In the example presented, if the amount of the TANF reduction was $20, the person could be disqualified from receiving food stamps for June and July and $20 could be added to the household's TANF income for June through November. The Department believes that States should be able to take both actions against the household simultaneously since both programs are affected by the violation. This proposal will also simplify the program and allow the State to use TANF procedures. Accordingly, the Department is proposing to remove the sentence from the regulations that provides that 7 CFR 273.11(k) shall not apply in the case of individuals or households subject to a food stamp work sanction.

As amended by Section 829 of PRWORA, Section 8(d) of the Act provides that food stamp benefits cannot be increased as a result of a decrease in the another assistance program ''for the duration of the reduction.'' The Department interprets this to mean that the prohibition on increasing benefits must be for the same months as the decrease in assistance to the extent possible, even if there is a break in participation. If the penalty cannot be imposed during the first month or months of the penalty in the other program because of notice of adverse action time frames, the prohibition on increasing food stamp benefits shall apply to the remainder of the assistance sanction period. If a sanction is imposed, and the other program subsequently lifts the sanction (for example, the person takes the required action), the food stamp prohibition on increasing benefits must be lifted when the food stamp office becomes aware of this.

The Department would like to emphasize that during the disqualification the State agency must act on changes that would affect the household's benefits which are not related to the assistance violation. For example, if the household's earned income decreases and the TANF grant is increased because of this, the food stamp office must take the decrease in earned income and the increase in the assistance payment into account for food stamp purposes.

In accordance with the above discussion, the Department is proposing to revise 7 CFR 273.11(k) in its entirety.

The current regulations at 7 CFR 273.9(b)(5)(i) exclude from income moneys withheld from an assistance payment, earned income or other income source, or moneys received from any source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not from income that was excludable. The Department is proposing to revise this paragraph so that the total amount of welfare or public assistance, rather than the total amount minus the repayment amount, is counted as income for food stamps purposes when the overissuance was caused by the household. To count the net amount of assistance would result in a household getting more food stamps in the month of repayment. For example, if the amount of the authorized assistance grant was $400, but the household will only receive $350 because $50 is going to be recouped to repay a prior overpayment caused by the household, food stamp benefits would be based on $400. To base food stamp benefits on $350 would result in an increase in food stamps for that month as the result of a failure of a member of the household to take a required action.

Prohibition on Increasing Benefits as the Result of Fraud

Section 911 of PRWORA provides that if an individual's benefits under a Federal, State, or local law relating to a means-tested welfare or a public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive increased food stamp benefits as a result of a decrease in income attributable to such reduction. We believes that cases of fraud will involve a failure to take a required action in another program, e.g. failure to provide complete and accurate information, and, therefore, it is not necessary to distinguish between fraud and other program violations.

The provision prohibiting an increase due to fraud is similar to the provision prohibiting an increase due to a failure to perform a required action except that in the case of fraud the statute does not reference the use of TANF procedures nor an additional percentage penalty. The Department is proposing to allow the use of TANF procedures for TANF fraud cases including the optional additional percentage reduction to simplify the procedures and because cases of fraud usually involve the failure of a household member to take a required action. Accordingly, the Department proposes to incorporate the prohibition on increasing food stamp benefits as the result of a fraud into the revision to 7 CFR 273.11(k).

Comparable Disqualifications—7 CFR 273.11(l)

Section 819(a) of the PRWORA amended Section 6 of the Act, 7 U.S.C. 2015, to establish requirements for State agencies that want to impose the same disqualifications under the Food Stamp Program that are imposed under other public assistance programs. The Department's proposals for implementing this provision are discussed below.

Section 6 (i) of the Act now provides that if a disqualification is imposed on a member of a food stamp household for a failure of the member to perform an action required under a Federal, State, or local law relating to a means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the Food Stamp Program. Under section 6(i), the requirement of the other program does not have to be comparable to a Food Stamp Program requirement. The Department interprets this provision to mean that the assistance program has to be authorized by Federal, State or local law, but that the specific requirement does not have to be specified in the law. For purposes of this provision, the Department proposes that a ''means-tested public assistance program'' shall mean any public or assisted housing under Title I of the United States Housing Act of 1937; any State temporary assistance for needy families funded under part A of Title IV of the Social Security Act; and any program for the aged, blind, or disabled under

Titles I, X, XIV, or XVI of the Social Security Act; Medicaid under Title XX of the Social Security Act; and State and local general assistance as defined in 7 CFR 271.2.

Since the law makes the comparable disqualification provision a State option, the Department proposes to allow State agencies the discretion to apply this provision to some, but not all, means-tested public assistance programs. For example, the State agency may opt to apply TANF disqualifications but not general assistance disqualifications. Further, the Department proposes to allow State agencies to choose which disqualifications within a specific program it wants to impose for food stamp purposes. For example, the State agency may choose to disqualify a person for food stamps who has failed to submit to a drug test for TANF purposes but it does not have to disqualify a member of the household for all TANF failures. State agencies will be required to develop their own tracking system(s) for purposes of this provision. The Department does not plan to change the reporting requirements for households.

For purposes of this provision, the Department proposes that this provision only apply if the person was receiving assistance at the time the disqualification was imposed by the other program. In other words, this provision would not apply to a failure to take an action at the time of initial application for an assistance program. If the person was not already participating, the person could not be ''disqualified.'' With the following exceptions, this provision would apply to disqualifications imposed during the period benefits were originally authorized by the other program and to disqualifications imposed at the time of application for continued benefits if there is no break in participation. The Department does not consider reaching a time limit for time-limited benefits or having a child that is not eligible because of a family cap as failures to perform an action required by an assistance program. The person or persons simply no longer meet the eligibility criteria for assistance. Further, the Department does not intend this provision to apply to purely procedural requirements such as a failure to submit a monthly report or failure to reapply for assistance.

One State agency has interpreted Section 835 of PRWORA as allowing a comparable disqualification for food stamps when the person is disqualified at the time of initial application for the assistance program. Section 835 amended Section 11(i)(2) of the Act, 7 U.S.C. 2020 (k)(2), to provide that ''except in the case of disqualification as a penalty for failure to comply with a public assistance program rule or regulation,'' no household shall have its food stamp application denied nor its food stamp benefits terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any program for which the household filed a joint application without a separate determination by the State agency that the household fails to satisfy the food stamp eligibility requirements. The Department interprets this change as only applying to joint applications for recertification. The Department's position is that a person must first be participating in the assistance program before he or she can be ''disqualified.'' Some examples of disqualifications that could affect food stamp eligibility are disqualifications imposed on Title IV–A participants for failing to have a child immunized or failing to cooperate.

The Department is proposing that current assistance disqualifications be applied to food stamp applicants as well as recipients who are already receiving food stamp benefits. For example, if a disqualification was imposed by another assistance program while the person was participating in that program and it is still in effect when the person initially applies for food stamps, the disqualification may be imposed at the time of the initial food stamp application.

Section 6(i)(2) or the Act, 7 U.S.C. 2015(i)(2), as amended by Section 819 of PRWORA, provides that if a disqualification is imposed on a ''member'' of a household for failure to perform a required action, the State agency may impose the same disqualification on the ''member'' of the household under the Food Stamp Program. In some assistance programs, if an individual fails to take a required action the whole assistance unit may be disqualified. Some State agencies are interpreting Section 6(i)(2), which allows use of TANF rules and procedures for TANF cases to allow the whole assistance unit to be disqualified for food stamp purposes when the whole assistance unit is disqualified for TANF purposes. The Department interprets the reference to TANF rules and procedures as authorizing the same notice and hearing requirements and disqualifying the person for the same months that the person is disqualified under the TANF program in a retrospective eligibility system. For example, if TANF counts all of the person's income while disqualified, then all of the person's income could be counted for food stamp purposes. The Department expects these procedures to vary from State to State. The Department does not believe that the intent was to disqualify the whole household even in TANF situations. Therefore, the Department is proposing that for food stamp purposes only the individual can be disqualified, rather than the whole household.

A number of States have expressed concern about indefinite and permanent disqualification periods. In some cases the person may become ineligible for some other reason, may not reapply for the other assistance program, or may move from the State where the penalty was imposed to another State that does not have the same requirement so the person is unable to comply and have the disqualification lifted. Also, some assistance programs only keep records for a certain time period and they may be unable to provide the food stamp office with the information necessary to disqualify the person. The Department believes that a stricter penalty should not be imposed for a failure to perform a required action in another program than the penalty imposed for the first time a person commits an intentional food stamp program violation. In most cases the penalty for the first food stamp violation is a 1-year disqualification. Therefore, if the other assistance program assigns a disqualification period of longer than one year or an indefinite or permanent disqualification period, the Department proposes that that the maximum length of the food stamp disqualification in these circumstances be no more than one year. Further, the Department proposes that the State agency be allowed to shorten the food stamp disqualification period if the person becomes ineligible to participate in the other program for some other reason during that one-year time period.

Although Section 6(i)(2) of the Act does not specify if the food stamp disqualification period has to be concurrent with the disqualification period imposed by the other assistance program, the Department proposes that the food stamp disqualification period be limited to the same period of time to the extent possible. It may not be possible to impose the full disqualification period because of the requirements for a food stamp advance notice of adverse action in accordance with 7 CFR 273.13. If the State agency does not have time to apply the full disqualification concurrently because of notice of adverse action requirements, the Department is proposing that the

State agency only apply the portion that may be imposed concurrently.

When a household member is disqualified from food stamp eligibility under Section 6(a)(2), the Department is proposing all of the member's resources be counted as they will continue to be available to the household. However, since this is an optional provision, we are proposing that State agencies be allowed the option of counting all or a prorated share of the income and deductible expenses of the disqualified individual. State agencies would not have the option of excluding the person's resources or all of their income because this could be to the household's advantage and could conflict with the previously discussed prohibition on increasing food stamp benefits as a result of a decrease in assistance benefits due to failure to take a required action.

Section 6(i)(3) of the Act, as amended by Section 819 of PRWORA, provides that if a member of a household has been disqualified under the comparable treatment for disqualification provision, the member of the household so disqualified may, after the disqualification period has expired, apply for food stamp benefits and shall be treated as a new applicant, except that a prior disqualification under Section 6(d) of the Act regarding work requirement disqualifications shall be considered in determining eligibility. This places the burden of initiating an action once the disqualification period is over on the household. The Department interprets the language regarding prior work disqualifications to mean that if a person had a food stamp work violation in a prior year and has a current food stamp work violation for which an overlapping comparable disqualification is being served, the next food stamp work violation, if any, will be considered the third violation. If there are two or more pending disqualifications, the Department proposes that the State agency impose them concurrently but keep track of the number of food stamp work violations for purposes of determining if a subsequent food stamp violation is the second or third violation. For example, if an individual is disqualified in June for a food stamp work violation and in June and July for a TANF violation, after being disqualified for June and July the person will not have to serve an additional disqualification period and the food stamp work disqualification will have been considered served. If the whole household is disqualified for June for a food stamp violation and one member is disqualified for June and July for a comparable disqualification, the household would be disqualified for June and the individual would be disqualified for July.

The Department is proposing to add a new provision to 7 CFR 273.1(b)(2)(x) to encompass those individuals disqualified from the Food Stamp Program based on a disqualification in another assistance program and to add a new section 7 CFR 273.11(l) to explain the requirements as discussed above.

Section 819 of PRWORA provides that State agencies electing to impose comparable disqualifications, must specify in their State Plan of Operations the guidelines the State agency will be using in carrying out this provision. The State Plan discussion should include the programs and disqualifications the State has selected, how information will be obtained, time restrictions set for indefinite and permanent disqualification, TANF procedures that will be used, and how the income of the person will be counted. Accordingly, the Department is proposing to add a new section 7 CFR 272.2(d)(1)(xiii) to require that the comparable disqualification procedures be included in the State Plan of Operation for those States electing to implement such Food Stamp Program disqualifications.

School Attendance—7 CFR 273.11(m) and (n)

Section 103 of PRWORA amended Part A of Title IV of the Social Security Act, 42 U.S.C. 601, *et seq.*, to provide for block grants to States for TANF. The title of section 404 is ''Use of Grants.'' Section 404(i) provides that a State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who has received assistance under the Food Stamp Program, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside. Section 404(j) provides that a State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under the Food Stamp Program, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to successfully complete a course of study that would lead to a secondary school diploma or its recognized equivalent.

We have had several questions as to whether or not these provisions provide for separate food stamp sanctions in addition to TANF sanctions. The Department has interpreted these provisions to pertain to TANF sanctions only. States may not apply a separate food stamp sanction to households based on Sections 404(i) and (j). The Department has come to this conclusion based on the fact that these provisions are in Title IV of the Social Security Act and are limited to States that receive a TANF block grant. By inserting Sections 404(i) and 404(j) into the TANF statute, Congress implied that only TANF benefits would be affected. In addition, the paragraph only references adults receiving food stamps; it does not reference food stamp sanctions. Finally, Congress made no cross-references to this provision in the Food Stamp Act.

If a food stamp household's TANF benefits are reduced under these provisions, however, States must apply Section 8(d) of the Act, as amended by 829 of PRWORA. Section 8(d) of the Act prevents an increase in food stamp benefits if a member of a household fails to comply with another Federal, State, or local means-tested benefit program. In addition, States may apply Section 6 of the Act, as amended by section 819 of PRWORA. Section 6 of the Act provides that if a disqualification is imposed on a member of a food stamp household for a failure of the member to perform an action required under a Federal, State, or local law relating to a means-tested public assistance program the State agency may impose the same disqualification on the member of the household under the Food Stamp Program.

Because we have had questions concerning these provisions, we are including a reference to them in 7 CFR 273.11, Action on Households with Special Circumstances. We clarify that these are TANF only sanctions. However, we also clarify that, in cases where TANF benefits are reduced or a member is disqualified under these provisions, States must prevent an increase in food stamp benefits and, in addition, they may reduce food stamp benefits by up to 25 percent and impose a comparable disqualification on the member for food stamp purposes.

Overlapping Penalties

In addition to prohibiting an increase in food stamp benefits as the result of fraud or failure to take a required action in an assistance program, the State agency may opt to impose a comparable disqualification period. The Department is proposing to include this provision in the new paragraph 7 CFR 273.11(l). In some cases a failure to take a required action may also involve a failure to

ensure that a minor child attend school or failure to work toward attaining a secondary school diploma. In such latter cases, the Department is proposing that the State agency choose under which provision to handle the cases. These options are included in the proposed new paragraphs 7 CFR 273.11(m) and (n).

Denial of Benefits for Drug-Related Felony Convictions—7 CFR 273.11(o)

Section 115(a) of PRWORA, 42 U.S.C. 862a, provides that an individual convicted of a felony under either Federal State law which has as an element the possession, use, or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act; 21 U.S.C. 802(c)) shall not be eligible for benefits under the Food Stamp Program. Section 115(b)(2) further provides that, although such an individual shall not be considered a member of a household for the purpose of determining benefits, the individual's income and resources shall be considered available to the household.

Section 115(d) of PRWORA gives States the option, through specific legislation enacted (by the State legislature) after the date of enactment of PRWORA, to exempt any or all individuals residing in the State from the application of subsection (a), *i.e.* ineligibility based on conviction for a drug-related felony. A State, through legislation, may also limit the period of ineligibility of individuals convicted of drug-related felonies.

Section 115(c) of PRWORA mandates that State's electing to enforce Section 115(a) must indicate in writing during the certification process whether the applicant, or a member of the applicant's household, has been convicted of drug-related felonies.

Pursuant to Section 116 of PRWORA, Section 115 became generally effective July 1, 1997, unless the State opts out of its provisions as described above. However, Section 116 further provides that in States that submit plans under TANF, Section 115 is effective when the plan is submitted to the Department of Health and Human Services (DHHS). Section 115 specifically provides that in no event can an individual be disqualified under this provision for a conviction for a crime occurring before August 22, 1996, the date of PRWORA's enactment.

To implement the provisions of Section 115 of the PRWORA, the Department is proposing to amend 7 CFR 273.11 by adding a new paragraph (o), which would specifically provide that an individual convicted (under Federal or State law) of a felony which has as an element the possession, use, or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act) shall not be considered a household member for Food Stamp Program purposes. The new paragraph will further provide that the exclusion would not apply if the State had elected to opt out of enforcing Section 115 through legislation, or would be in effect for a limited time if the State had elected to limit the length of the period of disqualification. Consistent with the statutory language, the Department is also proposing to amend 7 CFR 273.11(c)(1) to provide that the income and resources of individuals ineligible to participate in the program as the result of convictions for drug-related felonies shall be considered available to the household for purposes of determining eligibility and benefit levels. The Department is also proposing a technical amendment to 7 CFR 273.1(b), which will specify that individuals convicted of drug-related felonies shall not be considered household members.

We have no discretion to mitigate this provision. However, those States that would like to pursue option of opting out or limiting the disqualification period can contact States that have already done so for information. The following 19 States have either opted out or limited the disqualification time period: Louisiana, Oklahoma, Illinois, Michigan, Minnesota, Ohio, Wisconsin, New Hampshire, New York, Vermont, New Jersey, North Carolina, Colorado, Iowa, Utah, Hawaii, Nevada, Oregon and Washington.

Disqualification of Fleeing Felons

Section 821 of PRWORA amended Section 6 of the Act, 7 U.S.C. 2015, by adding a new paragraph (k) which disqualifies individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of a New Jersey, a high misdemeanor) from participating in the Food Stamp Program. Section 6(k) of the Act as amended by Section 821 of PRWORA, also disqualifies individuals who are violating a condition of probation or parole under a Federal or State law.

To implement these disqualification provisions, the Department is proposing to amend 7 CFR 273.1(b)(2), which defines the criteria for inclusion in eligible food stamp households, by adding a new paragraph (xi) specifically providing that individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of a New Jersey, a high misdemeanor), or who are violating a condition of probation or parole under a Federal or State law, are not to be considered members of households otherwise eligible to participate in the Program. The Department is also proposing to add a similar provision through a new paragraph (p) at 7 CFR 273.11.

The Department is proposing to mandate that State agencies verify the status of applicants to determine if they are subject to the provisions of 6(k) of the Act. In doing so the Department is also proposing to provide State agencies with broad discretion regarding the method of verifying an applicant's status since there are significant differences between the administrative structures of State agencies which may affect the nature of relationships between welfare agencies and the State or local law enforcement agencies which would provide verification of the applicants' status. One possible method of verification would be to establish a system under which State or local law enforcement agencies would periodically provide lists of individuals subject to disqualification under this section for matching by welfare agencies to determine if any applicants are subject to disqualification. The lists would most likely be in the form of computer tapes. Depending on the State agency's administrative structure, the matching could be conducted at either the State or local level. Another alternative would be to include a notice in the application indicating that the agency may match data with law enforcement agencies for the purposes of verification. The Department wishes to emphasize that this is one possible method of verification and that it is not our intent to exclude other systems or methods which may be established by State agencies. The Department is suggesting that, prior to providing comments in response to this proposed rulemaking, State agencies consult with State and local law enforcement agencies to determine the most effective method of verifying the status of applicants to determine whether they are subject to the provisions of Section 6(k) of the Act. To implement this provision the Department is proposing to add a new paragraph 273.2(f)(1)(ix).

Although it is the clear intent of both the statute and this proposed rule that Food Stamp Program participants who are subject to disqualification under Section 6(k) of the Act be terminated from the program as quickly as possible, State agencies may continue to allow such individuals to participate if so

requested by local, State or Federal law enforcement authorities and if such continued participation would expedite or assist in the apprehension of individuals fleeing to avoid prosecution or custody.

Cooperation With Law Enforcement Authorities

Section 837 of PRWORA amended Section 11(e)(8) of the Act, 7 U.S.C. 2020(e)(8), to require a State agency to furnish, upon request, the address, social security number, and, if available, photograph to any Federal, State, or local law enforcement officer of any household member. The officer must furnish the State agency with the name of the member and notify the State agency that the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of a New Jersey, a high misdemeanor). This provision also applies if the member is violating a condition of probation or parole imposed under a Federal or State law, or has information necessary for the officer to conduct an official duty related to the above-described individuals. The statute further specifies that the request must be made in the proper exercise of an official duty.

The Department is proposing to add a new paragraph (vii) to 7 CFR 272.1(c)(1) to specifically require State agencies to disclose to Federal, State or local law enforcement officers the address, social security number, and, if available, photograph of any household member if the officer furnishes the State agency with the name of the member and notifies the State agency that the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of a New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under a Federal or State law. The new paragraph also requires disclosure if the information regarding the household member is necessary for the officer to conduct an official duty related to the above-described individuals. The Department would like to clarify that the policy of 7 CFR 272.1(C), and will continue to be, that if an eligibility worker (EW) believes that a Food Stamp Program applicant or member of a participating household may be fleeing to avoid prosecution or custody for a felony the EW shall notify the appropriate law enforcement agency.

The Department would like to clarify that this provision in no way requires State agencies to collect photo IDs as a condition of eligibility. Though the regulations at 7 CFR 273.2(f) require State agencies to verify identity, they are very clear that any document which reasonably establishes the applicant's identity must be accepted. The State agency may not impose a requirement for a specific type of document such as a photo ID.

The Department would like to clarify that section 837 of PRWORA does not supersede the confidentiality provisions of section 11(e)(8) of the Act. State agencies may, however, verify the status of applicants or household members to determine if they are subject to disqualification under Section 6(k) of the Act.

Cooperation With Child Support Agencies—7 CFR 273.11(q) and (r)

Section 822 of PRWORA amended Section 6 of the Act, 7 U.S.C. 2015, by adding a new paragraph (l). This section gives a State agency the option to require cooperation with a Child Support Enforcement Program established under title IV, part D of the Social Security Act, 42 U.S.C. 651, *et seq.*, as a condition of eligibility. Separate provisions address custodial and noncustodial parents. For custodial parents, the requirement can be waived for good cause, but there is no good cause exception for noncustodial (including putative) parents. The provisions for custodial and noncustodial parents are discussed separately below.

Custodial Parent—7 CFR 273.11(q)

Section 6(e) of the Act, as amended by Section 822 of PRWORA, allows State agencies to disqualify a natural or adoptive parent or other individual (collectively referred to as ''the individual'') who is living with and exercising parental control over a child under the age of 18 if the custodial parent does not cooperate with the State agency in establishing paternity and collecting child support without good cause. The provision requires the Department, in consultation with the Department of Health and Human Services (DHHS), to develop standards for what will constitute ''good cause'' for failure of a custodial parent to cooperate. There are two separate issues to address: what constitutes cooperation, and what constitutes good cause. The Department has discussed the issues of good cause and cooperation with the DHHS staff responsible for TANF and the staff responsible for Child Support Enforcement. In defining cooperation of the custodial parent, the Department has based its proposal on wording already used by DHHS. Therefore, under proposed food stamp regulations the individual will be required to cooperate with the State agency in identifying and locating the absent parent of the child(ren); establishing the paternity of a child born out of wedlock; obtaining support payments for the child or the individual and the child; and obtaining any other payments or property due the child or the individual and the child. We also list actions that are relevant to or necessary for, achieving cooperation: appearing at an office of the State or local agency or the child support agency to provide verbal or written information; appearing as a witness at judicial or other hearings or proceedings; supplying information in establishing paternity; and paying to the child support agency any support payments received from the absent father.

The Department is also proposing to adopt DHHS' provisions concerning good cause exceptions. We list the circumstances under which cooperation may be against the best interests of the child and would, therefore, not be required. Establishing paternity, securing support, or identifying and providing information could result in physical or emotional harm to the child or the parent or caretaker relative which could be determined good cause for not cooperating.

The concepts of cooperation with child support enforcement agencies, and good cause for failure to cooperate, are new to the Food Stamp Program, but DHHS has used them for some time and States are familiar with them. The Department believes that relying on DHHS' expertise in these areas is initially the most practical and administratively efficient alternative. The Department is proposing to add a new paragraph 7 CFR 273.11(q) to codify this provision.

The Department is proposing that the State agency make both the cooperation and good cause determinations. If the State agency determines that the custodial parent has not cooperated without good cause, then that individual (and not the entire household) would be ineligible to participate in the Food Stamp Program. The statutory language did not authorize the disqualification of the entire household, and so the Department is proposing that the disqualification be limited to the offending custodial parent. The Department is proposing that the disqualification period is over as soon as it is determined that the individual is cooperating with the child support agency. The State agency must have procedures in place to re-qualify an individual once cooperation has been

established. We realize that many States already have such procedures in place. Therefore, at this time, we would like to solicit comments on those systems already in use.

The law did not specify how the income and resources of the disqualified person should be treated for the remaining household members. Since this is an optional provision, the Department is proposing that the State agency count all of the individual's resources, but to give State agencies the option to count all or a pro rata share of his income. The Department is proposing to amend 7 CFR 273.11(c) and 273.1(b)(2)(xii) to reflect this policy.

Section 6(l) of the Act prohibits the payment of a fee or other cost for services provided under a Part D, Title IV, Child Support Enforcement Program, and so the Department is proposing to prohibit the charging of such fees or costs.

The Department is proposing that if a State agency wants to use the option of disqualifying an individual who refuses to cooperate without good cause, the option must be included in its State Plan of Operation. Accordingly, the Department is proposing to add a new section 7 CFR 272.2(d)(1)(xiv) to reflect the above-discussed requirements.

Noncustodial Parent—7 CFR 273.11(r)

Section 822 of PRWORA also amended Section 6 of the Act by adding subsection (m) to give State agencies the option to disqualify the noncustodial parent who refuses to cooperate in establishing the paternity of a child and provide support for the child. This provision requires the Department, in consultation with DHHS, to develop standards for what will constitute cooperation on the part of the noncustodial parent. As mentioned previously, the Department has met with DHHS staff in developing this proposed rule, and we are proposing to adopt DHHS' definition of cooperation as the most practical approach, given DHHS' experience with the issue.

The Department is proposing that refusal to cooperate occurs if the noncustodial parent refuses to appear for an interview; refuses to furnish requested documentation; refuses DNA testing; or fails to make payments to the Child Support Enforcement agency. As with the custodial parent, if the State agency determines after contacting the Child Support Enforcement agency that the noncustodial parent has refused to cooperate, then that individual (and not the entire household) would be ineligible to participate in the Food Stamp Program. The statutory language did not authorize the disqualification of the entire household, and so the Department is proposing that the disqualification be limited to the individual. Consistent with the Department's proposed treatment for disqualified custodial parents, it would be the option of the State Agency to determine whether part or all of the income and the resources of the individual refusing to cooperate would be considered available to the rest of the noncustodial parent's household under this proposal. In addition, the Department is proposing that the disqualification period is over as soon as it is determined that the individual is cooperating with the child support agency. The State agency must have procedures in place to re-qualify an individual once cooperation has been established. We realize that many States already have such procedures in place. Therefore, at this time, we would like to solicit comments on those systems already in use.

Section 6(m) of the Act does not permit a fee or other cost to be charged the household for services of the Child Support Enforcement agency, and the Department's proposal includes this prohibition. To implement this provision, the Department is proposing to add a new paragraph 7 CFR 273.11(r).

Section 6 of the Act, as amended by Section 22 of PRWORA also requires the State agency to provide safeguards to restrict the use of information collected by the State agency to purposes for which the information is collected. The Department believes that this is an area in which the State agency should have flexibility to establish the specific safeguards. The Department is therefore proposing only to require that safeguards be in place.

The Department is proposing that if a State agency wants to use the option of disqualifying the noncustodial parent who refuses to cooperate, this option must be included in its State Plan of Operation. The Department is also proposing to add a new section 7 CFR 272.2(d)(1)(xiv) to require that the States that elect to implement this provision include these safeguards in their Plan of Operation.

Disqualification for Child Support Arrears—7 CFR 273.11(s)

Section 823 of the PRWORA amended section 6 of the Act by adding subsection (n) to give State agencies the option to disqualify a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of the individual's child. The provision also specifies that if a court is allowing the individual to delay payment or the individual is complying with a payment plan approved by a court or the Child Support Enforcement agency, the individual will not be disqualified.

As with the disqualification for failure to cooperate with child support enforcement officials, the Department is proposing that the disqualification for child support arrears apply to the offending individual and not to the entire household. The statutory language does not authorize the disqualification of the entire household. However, similar to the handling of the child support cooperation provision concerning the custodial and noncustodial parents, the Department is proposing that it will be the option of the State agency to determine whether part or all of the income and resources of a disqualified individual be considered available to the rest of that person's household. The Department is proposing to add a new section 7 CFR 273.11(s) to implement the disqualification, and is proposing to amend 7 CFR 273.11(c)(2) and (3), and 273.1(b) to incorporate its proposed treatment of the disqualified individual's income and resources.

Section 6(n) of the Act specifies that the individual will be disqualified during any month that the individual is delinquent in any payment due. Because an individual could always pay his or her child support toward the end of the month, it will be impossible to know when an individual is delinquent in time to disqualify him or her for that month. Therefore, under the Department's proposal the State agency must establish a claim against the household, in accordance with the regulations at 7 CFR 273.18, for any month for which it later discovers that the individual was delinquent and should have been disqualified.

The Department is proposing that if a State agency wants to use the option of disqualification for child support arrears, this option must be included in its Plan of Operation. Accordingly, the Department is proposing to include this section in the new 7 CFR 272.2(d)(1)(xiv) to reflect the addition.

7 CFR 273.16—Disqualification for Intentional Program Violation

The current regulations at 7 CFR 273.16 outline the procedures involved with Intentional Program Violations (IPVs) and IPV-related disqualifications. This proposed rule extensively revises this section of the regulations. The increased and additional disqualification penalties brought about by sections 813, 814 and 820 of PRWORA that need to be reflected in 7 CFR 273.16 are included in this rule. In

addition, this proposed rule contains a change necessitated by a court action on the imposition of disqualification periods. Clarification is also being proposed for a number of issues, including the definition of an IPV. Lastly, as part of an effort to streamline the regulatory requirements and to increase State agency flexibility in the area, the Department is proposing to remove prescriptive language and some requirements in many discretionary areas concerning IPVs and the IPV disqualification process.

General Administrative Responsibility—7 CFR 273.16(a)

The current regulations at 7 CFR 273.16(a) specify a State agency's responsibility for investigating and disqualifying individuals who commit IPVs. As part of the regulatory reorganization and streamlining effort, the Department is proposing in this rule to eliminate much of the prescriptive language under this section. Under this proposal at § 273.16(a), each State agency would be responsible for: (1) effectively and efficiently investigating suspected IPVs; (2) establishing a system for determining whether an individual has committed an IPV; and (3) when appropriate, disqualifying the individual from participation in the Program.

Definition of an IPV—7 CFR 273.16(c)

The current regulations at 7 CFR 273.16(c) provide a definition for an IPV. The Department is proposing to make three changes to this paragraph. The first change would eliminate the reference that this definition applies only to an administrative disqualification hearing (ADH). The Department believes that this definition should also apply to the other bases for IPV determination, which are a signed ADH waiver, a court finding, and a signed disqualification consent agreement. The second change would update the definition by eliminating the reference to *ATPs* (authorization to participate documents). In its place, the Department is proposing to use the term ''authorization card'' (which is defined in section 3(b) of the Act (7 U.S.C. 2012(b)(3))) and ''reusable documents used as part of an automated benefit delivery system'' (access device). This definition was updated to specifically provide for the acquisition and use of electronic benefit transfer (EBT) cards. For the third change, the proposed rule would specifically include trafficking in this definition. This is being provided for clarification purposes only and does not constitute a change in policy. The Department has historically viewed (and continues to view) any type of trafficking as an IPV offense. Finally, as part of the regulatory reorganization, this paragraph would be incorporated into § 273.16(b) in the proposed rule.

PRWORA Section 813—Doubled Penalties for Violating FSP Rules

As reflected in the current regulations at 7 CFR 273.16(b), a graduated system for IPV disqualification penalties exists. Under this system, an individual found to have committed an IPV not related to the trading of coupons for firearms, ammunition, explosives or controlled substances would receive a disqualification for: (a) 6 months for the first offense; (b) 12 months for the second offense; and (c) a permanent disqualification for the third offense. In addition, an individual convicted of a controlled substance-related IPV would receive a 12 month disqualification for the first offense and a permanent disqualification for the second offense.

Section 813 of PRWORA amended section 6(b)(1) of the Act (7 U.S.C. § 2105(b)(1)) to increase the penalties twofold for the non-permanent offenses. Specifically, unless the offense falls under a specific category requiring a more stringent penalty, Section 6(b)(1) now requires that an individual be disqualified for one year for a first finding, and for two years for a second finding of IPV. The penalty for a third finding of IPV, permanent disqualification, would remain the same. For convictions involving the trading of controlled substances for coupons, Section 813 of PRWORA requires that an individual be disqualified for two years for the first offense. Accordingly, the Department is proposing to reflect these legislative changes in § 273.16(c) of this rule.

PRWORA Section 814—Disqualification of Individuals Convicted of Trafficking $500 or More

Section 814 of PRWORA amended Section 6(b)(1)(iii)of the Act to introduce more stringent disqualification penalties for those individuals who traffic food coupons. Specifically, under the new legislation, individuals would be permanently disqualified from FSP participation if they are convicted of a trafficking offense of $500 or more. Individuals trafficking under $500 would continue to be subject to the same penalties as other IPVs. Accordingly, the Department is proposing to reflect this legislative change in § 273.16(c) of this rule.

The statutory language provides for this penalty to take effect where there is an actual conviction. Hence, the increased trafficking penalty would be applied when there is such a finding by a court of appropriate jurisdiction. In addition, the Department considered whether this increased trafficking penalty applies to violations settled by deferred adjudication. While the Department recognizes that the statutory language speaks of a conviction, and not of a finding or a settlement, the Department believes that this increased penalty for trafficking may be applied in cases of deferred adjudication. Trafficking for an amount greater than $500 is undeniably a serious offense. As such, if the case warrants the formal involvement or inclusion of a Federal, state or local court process, then the State agency should apply the increased penalty. Therefore, it is the Department's intent in this proposed rule to allow the inclusion of this increased penalty in signed deferred adjudications in exactly the same manner that the existing penalties are currently included in such agreements. Accordingly, this proposal is reflected in § 273.16(c) in this rule.

As opposed to deferred adjudication, since there is no formal involvement or inclusion of a Federal, state or local court process in the ADH system, the Department is proposing that the increased penalty not apply to IPVs determined as a result of an ADH or a signed waiver to the right to an ADH.

When PRWORA was originally published, some State agencies inquired as to whether Section 6(b)(1)(iii)'s $500 benchmark refers to a single trafficking transaction or to the cumulative amount trafficked. The Department maintains a long-standing policy that a series of related infractions may embody a single IPV. Therefore, if the cumulative amount of the related infractions making up the IPV is greater than $500, then the individual would be subject to the increased trafficking penalty.

PRWORA Section 820—Ten Year Disqualification for Duplicate Participation

Under certain circumstances, PRWORA lengthened the penalty associated with fraudulent receipt of multiple benefits. This provision is in section 820 of PRWORA, which amended section 6 of the Act (7 U.S.C. § 2015) by adding a new paragraph ''(j)''. Paragraph (j) provides that ''[a]n individual shall be ineligible to participate in the food stamp program as a member of any household for a 10-year period if the individual is found by a State agency to have made, or is convicted in a Federal or State court of having made, a fraudulent statement or representation with respect to the identity or place of residence of the

individual in order to receive multiple benefits simultaneously under the food stamp program.''

The increase in the penalty for fraudulent representation of identity or residence to obtain multiple duplicate benefits reflected in the quoted statutory language is clearly intended to be an additional deterrence against this kind of fraud. However, the 10-year period of disqualification associated with this provision does not apply to all cases of duplicate participation (that is, where an individual receives food stamps as a member of more than one household). There are three criteria to consider in determining whether this disqualification provision applies. First, the individual must have been found by a State agency or court of committing a certain unlawful act. Second, the unlawful act is ''having made, a fraudulent statement or representation with respect to the identity or place of residence of the individual.'' Finally, the purpose of committing this misrepresentation must have been to receive multiple benefits under the FSP. Section 820 does not apply unless all three of these criteria are present.

The Department considered whether it is necessary for the individual to be successful in obtaining multiple benefits in order for this provision to apply. The title of section 820 of PRWORA is ''Disqualification for Receipt of Multiple Food Stamp Benefits'', however, the language of the text is directed at the penalty for the intentional act of misrepresenting information in order to receive multiple benefits. The Department has found nothing in the text or legislative history to suggest that Congress intended the penalty to be more or less severe depending upon whether the individual was successful in obtaining the multiple benefits. Currently, when a household is identified as having one or more members who are already receiving benefits as a member of another household or in another locality, State agencies are required to investigate the cause of the duplicate participation and when appropriate, pursue the matter through the claims collection and/or IPV referral process (7 CFR 272.4(f)(3)).

A State agency is required to take the IPV referral route when it believes it can prove an individual's intent to abuse the FSP by providing false or misleading information to receive benefits for which the individual is not entitled. Some State agencies pursue an IPV regardless of whether the individual was successful in being certified to receive the additional benefits. The Department believes that this approach is consistent with an aggressive anti-fraud program and strongly encourages those State agencies which pursue attempted (as well as successful) fraud to continue to operate under their current policy. The Department therefore proposes to make clear that the coverage of Section 6(j) provision also applies to individuals who attempt to receive multiple benefits by misrepresenting their identity or residence.

Appropriate Penalty Determination

Prior to the enactment of PRWORA and the implementation of its predecessor (the Mickey Leland Childhood Hunger Relief Act (Pub. L. 103–66) (Leland Act)), only one set of disqualification penalties existed for IPVs. This set of disqualification penalties, as discussed earlier in this preamble, applied to all IPVs and began with a relatively short disqualification period for the first finding of IPV and culminated with a permanent disqualification for the third IPV finding. The Leland Act and PRWORA changed this by introducing varying disqualification penalties for certain types of IPV-related offenses.

Pursuant to this rule making, disqualification periods based on the particular offense and finding would be:

IPV-RELATED DISQUALIFICATION PENALTIES

Disqualification type	First finding	Second finding	Third finding
''Any'' IPV	12 months	24 months	Permanent
Controlled substances related	24 months	Permanent	See below [1]
Firearms, ammunition, and explosives related	Permanent	See below [1]	See below [1]
Duplicate participation related	10 years	10 years [2]	Permanent (same as ''any'' IPV) [2]
Trafficking $500 or greater related	Permanent	See below [1]	See below [1]

[1] Since the prior offense (i.e., first or second) results in a permanent disqualification, the same penalty (permanent disqualification) would be applied if, for some inexplicable reason, the individual was not already permanently disqualified when the subsequent finding occurred.

[2] PRWORA does not specify a graduated increase in penalty length for subsequent findings. The appropriate disqualification period lengths for these subsequent occurrences are discussed in detail below.

The Department believes that clarification is needed to determine which penalty takes precedence when an IPV also is included in one of the four special disqualification categories listed above. For example, an individual who has already committed two IPVs may be found to have committed a third IPV and the third offense is for duplicate participation. In this situation, the State agency would need to determine whether the appropriate disqualification would be for 10 years (for duplicate participation) or permanently (as is the penalty for all third IPVs). The Department believes that it is appropriate to permanently disqualify the individual. The progressive penalty structure and policies are key components of program integrity. Progressive penalties deter repeat offenders by providing a framework for clear and consistent consequences for their actions. Although certain offenses are dealt with more severely than others, the FSA provides for a maximum of three offenses. The penalty for a third offense, permanent disqualification, is the ultimate redress for repeat violators. The Department believes that it would be contrary to the Act to apply a shorter penalty or to allow a repeat offender a fourth opportunity to intentionally violate the Program simply because of the nature of the offense. Further, the 10-year penalty for duplicate participation and the 2-year penalty for the first finding involving controlled substances are intended to deter these more serious types of offenses. Thus, the Department intends that the 10-year and 2-year penalties be imposed whenever they apply, except when an earlier disqualification penalty was either as serious, more serious or the current violation is the individual's third. A permanent or higher disqualification would always take precedence over a lesser penalty. These decisions are reflected in § 273.16(c) in this proposed rule.

Applicability of PRWORA Disqualification Penalties

As previously discussed, sections 813, 814 and 820 of PRWORA amended Section 6 of the Act to either introduce a new or increase an existing disqualification penalty for committing an IPV. Questions have arisen as to whether these new penalties should be applied to all ADHs, court hearings, etc., held subsequent to enactment of the law (regardless of when the actual offense occurred) or only to those cases in which the actual offense occurred subsequent to State agency implementation of the new legislation.

PRWORA set the date of enactment, August 22, 1996, as the effective date for these provisions of the law. As a result, State agencies needed to use their own discretion as to whether the new or increased penalties should apply to offenses that occurred prior to State agency implementation of the new legislation. It is therefore impractical for the Department to introduce standards on an issue for which action has already been taken.

Imposition of Disqualification Penalties—7 CFR 273.16(a), (e), (f), (g) and (h)

The current regulations concerning the imposition of disqualification periods specify that, if the individual is not certified to participate in the FSP at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits. A court finding (*Garcia* v. *Concannon and Espy,* 67 F. 3d 256 (1995)) in the Ninth Circuit has found that this interpretation is not consistent with Section 6(b)(1) of the Act (7 U.S.C. 2015(b)(1)). The Court found that an individual should be disqualified from the FSP immediately even though he/she may not be eligible to participate. The Department does not concur with this finding. However, to ensure nationwide consistency in this policy, the Department is proposing in this rule to require State agencies to impose a disqualification period for all IPV-related disqualifications as soon as administratively possible, regardless of eligibility. Under this proposal, a State agency would be required to begin the disqualification no later than the second month which follows the date the individual receives written notice of the disqualification.

Notification to Applicant Households—7 CFR 273.16(d)

The current regulations at 7 CFR 273.16(d) specify that the household shall be notified in writing of the disqualification penalties when it applies for benefits. The Department is proposing, in § 273.16(c)(10) of this rule, to retain this requirement. However, much of the prescriptive language would be removed.

Bases for Disqualification—7 CFR 273.16(e) through (h)

Current regulations at 7 CFR 273.16 allow any one of the following four means as a basis for disqualification: (1) An ADH finding; (2) a signed waiver to the right of an ADH; (3) a finding by a court; and (4) a signed disqualification consent agreement for cases of deferred adjudication. The Department is proposing to retain these four bases with some streamlining revisions which are discussed elsewhere in this preamble. In addition, as part of the regulatory reorganization, these bases, currently found in 7 CFR 273.16(e), (f), (g) and (h), would be consolidated into one paragraph at § 273.16(d).

Administrative Disqualification Hearings—7 CFR 273.16(e)

The current regulations at 7 CFR 273.16(e)(1) discuss consolidating an ADH with a fair hearing. The consolidation of the two hearings would remain an option in § 273.16(d)(1) in the proposed rule. In addition, the Department, in an effort to increase State agency flexibility, is proposing to remove prescriptive language from the current paragraph.

The current regulations at 7 CFR 273.16(e)(2) discuss specific procedures for conducting the ADH. The Department is proposing in this rule to allow those State agencies which conduct ADHs to establish their own procedures. However, a time frame for reaching and notifying an individual of a hearing decision would still be maintained. The current time frame is within 90 days after the individual is notified that the hearing has been scheduled. Under this proposal, the time frame would be within 180 days after the discovery of the suspected violation or within 60 days of the date of the hearing, whichever is sooner.

The current regulations at 7 CFR 273.16(e)(3) discuss the advance notice of the ADH. The Department is proposing to remove redundant and overly prescriptive language. The remaining language would be found in § 273.16(d)(1) in this proposed rule.

The current regulations at 7 CFR 273.16(e)(4), which discuss the scheduling of the hearing and what constitutes timely good cause for not attending the hearing, would be removed under the proposed rule. This would provide a State agency with more flexibility and the ability to determine its own good cause criteria, if any. In addition, all but the first sentence of paragraph 7 CFR 273.16(e)(5) would be eliminated. The paragraph containing the remaining language stating that a pending ADH or a pending ADH decision would not affect an individual or household's right to participate in the FSP would be contained in § 273.16(d) of the proposed rule.

The current regulations at 7 CFR 273.16(e)(6) state that the determination of an IPV shall be based on clear and convincing evidence. The Department is not proposing to make any change to this evidentiary standard. However, this paragraph would be moved to § 273.16(b) in the proposed rule.

The Department is proposing in this rule to eliminate 7 CFR 273.16(e)(7). This paragraph requires the hearing authority decision to specify the reasons, identify the supporting evidence, identify the pertinent regulation, and respond to reasoned arguments. The Department believes that these requirements need not be specified as they are required by due process.

The current regulations at 7 CFR 273.16(e)(8) discuss the imposition of disqualification penalties and specify the individual's limited appeal rights of an ADH decision. The imposition of the disqualification periods is addressed in depth elsewhere in this preamble. The Department is proposing in this rule to reorganize the paragraph containing the individual's appeal rights of an ADH decision (7 CFR 273.16(e)(8)(ii)) into § 273.16(d)(1).

The current regulations at 7 CFR 273.16(e)(9) discuss notification of the ADH decision and related matters. The Department is proposing only to include language from this paragraph stating that the household is to receive written notification of the ADH decision and the impending disqualification.

The current regulations at 7 CFR 273.16(e)(10) discuss local level ADHs. This proposal at § 273.16(d)(1) would still allow local-level hearings. The Department is proposing to delete prescriptive language from this section. In addition, the Department would like to clarify that either the affected individual or local agency may appeal a local-level decision to a State-level hearing. This is reflected in § 273.16(d)(1)(vii) of this proposed rule.

Waived ADH—7 CFR 273.16(f)

The current introductory text at 7 CFR 273.16(f) provides the State agencies with the option of establishing procedures for allowing an accused

individual to waive his/her right to an ADH. The Department is not proposing any significant policy revisions in this area. However, under this proposal, the introductory text would be designated as its own paragraph at § 273.16(d)(2).

Current regulations at 7 CFR 273.16(f)(1) discuss procedures for advance notification. The proposed rule, in § 273.16(d)(2), would require that each State agency develop its own waiver form and provide the individual written notification. In addition, the waiver/written notification must clearly inform the affected individual that, once the form is signed, he/she would be disqualified from the Program.

The current regulations at 7 CFR 273.16(f)(2) discuss the imposition of disqualification penalties and the individual's limited appeal rights after he/she signs the waiver. The imposition of the disqualification periods is addressed in depth elsewhere in this preamble. The Department is proposing in this rule to reorganize the paragraph containing the individual's limited appeal rights of an ADH decision (7 CFR 273.16(f)(2)(ii) into § 273.16(d)(2)).

The current regulations at 7 CFR 273.16(f)(3) discuss notification of disqualification and related matters. The Department is proposing only to include a statement that the individual is to receive written notification of the impending disqualification. This revision would be incorporated into § 273.16(c)(11) in this proposed rule.

The current regulations at 7 CFR 273.16(f)(4) discuss waivers of a local level hearing. As part of the streamlining effort, the Department is proposing to remove this paragraph to increase State agency flexibility. However, a State agency would still be able to have a local-level waiver process under the proposed rule.

Court Referrals—7 CFR 273.16(g)

The current regulations at 7 CFR 273.16(g) discuss referring suspected IPV cases for prosecution by a court of appropriate jurisdiction. The Department, as part of its effort to increase State agency flexibility, is proposing to remove prescriptive language from this paragraph. The proposed rule, in § 273.16(d)(3), would provide for court referrals as a mechanism for determining an IPV. The only requirement, in addition to a State agency establishing its own procedures, would be the actions the State agency must take when the court fails to impose a disqualification period. This requirement, proposed in § 273.16(c)(7), would be the same as current FNS policy.

Deferred Adjudication—7 CFR 273.16(h)

The introductory text at 7 CFR 273.16(h) in the current regulations provides a State agency with the option to establish procedures for allowing an accused individual to sign a disqualification consent agreement for cases of deferred adjudication. The Department is not proposing any significant policy revisions in this area. However, the introductory text, as part of the regulatory reorganization effort, would be condensed and designated as its own paragraph under § 273.16(d)(4) in this rule.

The current regulations at 7 CFR 273.16(h)(1) discuss a number of requirements pertaining to deferred adjudication, such as notification and the disqualification consent agreement. The Department is proposing in this rule to remove prescriptive language from the regulations. The proposed rule, at § 273.16(d)(4), would require the State agency to develop its own disqualification agreement form and provide the individual written notification of the consequences surrounding deferred adjudication.

The current regulations at 7 CFR 273.16(h)(2) discuss the imposition of disqualification penalties. This is addressed in detail elsewhere in this preamble and would be consolidated into § 273.16(c)(11) in the proposed rule.

The current regulations at 7 CFR 273.16(h)(3) discuss notifying the individual of the impending disqualification and related matters including notifying the household and initiating collection action. The Department is proposing only to include a statement that the household is to receive written notification of the impending disqualification. This revision would be incorporated into § 273.16(d)(1) in this proposed rule.

Conducting Both Court Referrals and ADHs

The current regulations at 7 CFR 273.16(a)(1) prohibit a State agency from initiating an ADH against an individual, ''. . . whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction. . . .'' However, the current regulations at 7 CFR 273.16(e)(3)(iii)(H) appear to contradict this paragraph by stating that an advance notice of an ADH shall contain language indicating that ''. . . the hearing does not preclude the State or Federal Government from prosecuting the household member for intentional Program violation in a civil or criminal court action.'' In an effort to eliminate this inconsistency while allowing greater State agency flexibility and increasing the likelihood that violators would receive the appropriate disqualification, the Department is proposing to change the policy at 7 CFR 273.16(a)(1).

The proposal, found in § 273.16(d)(5) of this rule, would specify that a State agency may: (1) simultaneously begin and/or conduct an ADH and court action and may proceed with a court action whether or not a violation has been determined by the ADH; and (2) conduct and make a determination based on an ADH for any case for which the court has not already returned a verdict. The Department feels that allowing the transpiration of both activities would not constitute double jeopardy since one action is administrative while the other action is judicial.

Reporting Requirements—7 CFR 273.16(i)

State agencies are required by 7 CFR 273.16(i) to report information about disqualified individuals to FNS. Outside of changes necessitated by the *Garcia* v. *Concannon and Espy* decision and the Departmental streamlining effort, policy interpretations and changes in this area will be addressed and proposed under a separate rulemaking.

Reversed Disqualifications—7 CFR 273.16(j)

Current regulations at 7 CFR 273.16(j) discuss actions to be taken by the State agency on reversed disqualifications. The Department is not proposing any change in this area other than to redesignate the paragraph as § 273.16(f).

7 CFR 273.25—Time Limit for Able-Bodied Adults Without Dependents

Section 824 of P RWORA amended Section 6 of the Act by adding a new section (o) that limits the receipt of food stamps for certain able-bodied adults to three months in a three-year period unless the individual is working or participating in a work program 20 hours per week, or is participating in a workfare program. Individuals can regain eligibility, and may receive an additional three months of food stamps while not working in certain circumstances. Amended Section 6(o) creates some exceptions, and receiving food stamps while exempt does not count towards an individual's time limit. In recognition that it may be difficult for individuals to find work in depressed labor markets, the statute authorizes waivers for individuals in areas in which the unemployment rate

is above ten percent, or where there is a lack of sufficient jobs.

The time limit is complex and raises many issues. In order to simplify the analysis, the preamble and regulatory language are organized as follows: general rule, exceptions, regaining and maintaining eligibility, eligibility for the second three countable months, and waivers. In developing this proposed rule, the Department has attempted to balance the competing goals of ensuring consistent national application of these requirements, and providing State agencies with appropriate implementation flexibility, to implement this provision. The Department is especially interested in comments on this balance, as well as on the practical implications of the proposed rule's provisions. Because there are many requirements that apply only to the time limit, the Department is proposing to codify this provision in a new regulatory section—7 CFR 273.25.

General Rule

Under the time limit of Section 6(o), individuals are not eligible to participate in the Food Stamp Program as a member of any household if the individual received food stamps for more than three countable months during any three-year period. Individuals may regain eligibility or may be eligible for up to three additional countable months under certain circumstances. ''Countable months'' are months during which an individual receives food stamps and is not either exempt, covered by a waiver, working 20 hours per week, participating in and complying with a work program 20 hours per week (as determined by the State agency), or participating in and complying with a workfare program. As discussed below in the context of measuring and tracking the months, the Department is proposing that only full benefit months be considered ''countable months.'' The provision also specifies that nothing in Section 824 makes an individual eligible for food stamps if he or she is not otherwise eligible for benefits. Therefore, in the discussion below, a statement that someone is ''eligible'' simply means that the person is eligible under the time limit. The person must still be otherwise eligible for the Food Stamp Program in order to receive benefits.

This general rule raises four fundamental issues: what will satisfy the work requirement, how will the time (three months and three years) be tracked, what will count as receiving food stamps, and what are the other administrative requirements (e.g., verification and reporting) that are triggered by this provision? These issues are discussed below. The exceptions are discussed separately.

Satisfying the Work Requirement

Section 6(o) limits the receipt of food stamps for certain able-bodied adults who are not either: working 20 hours per week (averaged monthly), participating in and complying with a work program 20 hours per week (as determined by the State agency), or participating in and complying with a workfare program. These options (working or participating in a work program 20 hours per week or participating in workfare) will be referred to as the ''work requirement.'' As long as an individual is satisfying the work requirement (or is exempt or covered by a waiver), the individual's participation is not counted, and the individual can participate as long as he or she is otherwise eligible. Issues involving the ways that an individual can satisfy the work requirement are discussed separately below.

The first issue that arises in this context is what is meant by ''20 hours a week averaged monthly?'' The plain meaning of ''averaged monthly'' means averaged over the month. The month of February has 28 days, or four weeks. In this case, 20 hours a week averaged monthly would be 80 hours ($20 \times 4 = 80$). However, the month of March has 31 days, or approximately 4 and a half weeks. If we were to take into consideration the additional 3 days, twenty hours a week averaged monthly would equal more than 80 hours. The Department believes that it would be administratively difficult for the State agency to calculate a different number of hours for each month according to how many days there are in the pertinent month. Also, the Department believes that it should not require an individual to work more than 80 hours to maintain eligibility while to regain eligibility an individual only has to work 80 hours in a 30 day period. Therefore, the Department is proposing that ''20 hours a week averaged monthly'' mean 80 hours a month.

An individual can satisfy the work requirement by ''working'' 20 hours or more per week, averaged monthly. One issue that arises in this context is whether the ''work'' has to be paid work (or paid at any particular level). Neither the statutory language nor the legislative history requires that individuals receive money in exchange for work in order to satisfy this requirement. An individual who is being paid in kind (for example, someone managing an apartment complex in exchange for free rent), is clearly ''working,'' and should be considered as such. But the question about whether unpaid work will qualify as ''working'' is less clear. The Department recognizes that it may be difficult for individuals with few job skills or no significant job history to obtain paid employment. In some cases, volunteer work may be the only way for these individuals to obtain needed job skills and a job history to make them more employable. Allowing volunteer work to count as work raises some concerns about verification and the potential for abuse. In order to balance these competing concerns, the Department is proposing a definition of ''work'' that specifically includes unpaid work under standards established by the State agency. It is the Department's intent that volunteer work will be allowed to satisfy the work requirement, and that State agencies shall verify it the same way they verify paid work. Work in exchange for goods or services (''in kind'' work) is not to be considered ''unpaid'' work for these purposes.

Another issue that arises in this context is how much work will satisfy the work requirement, and how to handle situations in which someone normally meeting the work requirement falls somewhat short. The statutory language requires someone to work ''20 hours per week, averaged monthly.'' However, the Department recognizes that there may be cases in which an individual usually works 20 hours per week, but because of an emergency or other ''good cause,'' the individual falls short of the required number of hours. In part-time employment, workers are often not able to make up for lost hours. Someone who misses a day of work (or even a few hours) because of a family illness or other emergency could lose food stamp benefits for the month if he or she could not make up the hours. (As discussed later, someone who misses work because of his or her own illness may be exempt under the ''medically certified as physically or mentally unfit for employment'' exception.)

The Department believes that such a narrow interpretation of the requirement that an individual work 20 hours per week ignores the realities of working life and goes beyond the intent of the provision to require able-bodied adults to work in order to receive food stamp benefits. In addition, participants who are satisfying the work requirement by participating in a work program are already covered by a good cause provision in 7 CFR 273.7(m). A policy that includes some practical flexibility for individuals who are participating in a work program, but not for those who

are working could discourage individuals from electing to satisfy the requirement by working. Therefore, the Department is proposing that someone who has missed work for good cause (as determined by the State agency) will be considered to be satisfying the work requirement as long as the absence from work is temporary, and the individual retains his or her job. Beyond these basic limits, the Department believes that State agencies are in a better position to identify situations where the good cause provision would be appropriate. The Department intends for this good cause provision to be used sparingly, and only in circumstances under which the individual would normally be granted leave or time off, or when the absence would not jeopardize the individual's employment status. The Department believes that this proposal reasonably balances the reality of working life with Congress' intent to make food stamp recipients who can work, work.

The second way an individual can satisfy the work requirement is by participating in and complying with a work program for 20 hours per week, as determined by the State agency. (The definition of ''work program'' makes reference to the Job Training Partnership Act (JTPA) (29 U.S.C. 1501, et seq). However, the Section 199A(c) of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105–220) provides that all references in any other provision of law to a provision of the Job Training Partnership Act shall be deemed to refer to the Workforce Investment Act of 1998. Therefore in this preamble and in the regulation text any reference to JTPA has been replaced by WIA). ''Work program'' is defined by the statute to mean a program under the Workforce Investment Act of 1998 (29 U.S.C. 1501, et seq.)); a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or an employment and training program, other than a job search or job search training program, operated or supervised by a State or political subdivision of the State that meets standards approved by the Governor of the State. As specified in the statutory language, the State agency may determine whether and when an individual has participated in and complied with a work program for 20 hours per week. Existing regulations at 7 CFR 273.7 address issues that arise in this context (e.g., whether the individual has ''good cause'' for failing to meet the requirements of the work program), and the Department does not propose to change any of those regulations in this rulemaking. Only three issues are raised that are unique to this time limit: whether a program must be approved by FNS in order to qualify as a ''work program,'' whether an individual can combine work and participation in a work program to meet the 20 hour per week requirement, and whether the employment and training program can contain job search as a subsidiary component.

The statutory language does not require that a qualifying work program be an FNS Employment and Training (E&T) program under 7 CFR 273.7(f). Section 6(o) only requires that a qualifying work program not be a job search or job search training program, and that it meet standards approved by the Governor of the State. While the Department believes that it would be appropriate for FNS to review programs that States are proposing to operate as work programs, it also believes it would be administratively burdensome to do so, especially since FNS already reviews and approves FNS E&T programs through the state plan process. Therefore, the Department is not proposing that these plans be reviewed and approved by FNS, but is cautioning State agencies to scrutinize these programs carefully so that they are not later determined through the quality control process not to meet the requirements of the statute.

The second issue raised in this context is whether the work program can contain job search as a subsidiary component. The Department realizes that there are work programs that may include some job search activity and it does not want the minor activity (such as job search) to invalidate the bulk of the component (such as education). Therefore, the Department is proposing that a qualifying work program may contain job search as a subsidiary component but that the program must emphasize the component that satisfies the work requirement and that the job search activity be less than half of the requirement.

With respect to the question of whether work and work program hours can be combined to meet the 20 hour per week requirement, the Department believes allowing an individual to combine these hours would be consistent with the intent of the provision. The Department has therefore proposed to allow a combination of work and participation in a work program to satisfy the 20 hour per week requirement.

Measuring and Tracking Time

Within the context of the general rule that an individual can participate for three (countable) months during a three year period, there are two time elements that must be tracked: the three months of participation, and the three-year period. (In order to regain eligibility, the statute introduces a third measure of time—''a 30-day period''—which will be discussed later.) The Department believes that State agencies should have maximum flexibility to measure and track these time periods, and so is proposing only a few requirements in this area.

With respect to the basic three months of participation, the statute provides specifically that the months do not have to be consecutive months. An individual could use one ''countable'' month, go off of the Food Stamp Program for a few months (those months are not counted because the individual is not receiving food stamps), and then use another countable month. This example holds true even if the individual was not participating because of a sanction. For example, if an individual uses one countable month, and then gets a job that he or she quits without good cause, he or she is ineligible under the voluntary quit provision of 7 CFR 273.7(n) for six months. Six months later, after the sanction has expired, the individual can use another countable month if he or she is otherwise eligible. An individual could also use one countable month, work 20 hours per week for a few months (those months are not counted because the individual is satisfying the work requirement), and then use another countable month. The fact that the first three countable months do not have to be consecutive is significant because the statutory language requires that the second three countable months be consecutive. (Eligibility for the second three countable months is discussed below.)

The only other substantial issue to address in the context of measuring the basic three months of participation is whether to count partial months. To count a partial month of benefits as a ''month'' would penalize individuals who applied toward the end of the month. It could also result in someone getting substantially less than three full benefit months if the individual comes on and off the Food Stamp Program as he or she gets work and then loses it. Counting only full benefit months will also be much easier for States to administer. Therefore, as mentioned earlier, the Department is proposing that partial months, i.e., months in which benefits were prorated, not be considered ''countable months.'' These proposals involve measuring the basic three countable months; State agencies

can track these months as they deem appropriate.

The second time period that must be measured (and possibly tracked) is the three-year period. Section 6(o) of the Act provides that individuals generally are limited to receiving food stamps for three countable months in a three-year period. Issues that arise in this context are whether the period will be ''rolling'' or ''fixed,'' when the period starts, and what the three-year period cannot include. The Department believes that a clarification will help explain the issues and options discussed below. Conceptually, the three-year period is a background against which an individual's countable months are measured. Therefore, unlike the ''countable months,'' which start and stop as appropriate, the three-year period is a continuous period. Within the few parameters discussed below, the Department proposes to give State agencies maximum flexibility to track the three-year period as they deem appropriate, given their choices as to how to measure the period, their computer systems' tracking abilities, etc.

The language of Section 6(o) provides that an individual is ineligible if, ''during the preceding 36-month period,'' (emphasis added), the individual participates for more than three countable months. There are two basic ways a State agency could measure or track the three-year period: as a ''fixed'' or a ''rolling'' period. A fixed period has a definite start and stop date; it starts on a given date, runs continuously for three years, stops exactly three years later, and then a new fixed three-year period starts. Under a fixed period approach, when a new three-year period starts, a participant's slate is ''wiped clean,'' and he or she can be eligible for another three countable months. A rolling period does not have definite start or stop dates; using a rolling period, the eligibility worker always ''looks back'' three years from the date of application (but not beyond the notification date or November 22, 1996, as discussed below) and keeps looking back three years each ensuing month. Under the rolling period approach, a participant must wait three years between a total of three countable months.

The following example illustrates the different approaches. The State agency notified recipients of this provision on November 22, 1996 that it is using a fixed three-year period beginning November 22, 1996 and ending November 21, 1999. Mary, a food stamp recipient, gave birth to a baby in November, 1996. Mary's three-year clock started on November 22, but because she had a baby she was exempt from the time limit. On April 30, 1999, Mary's baby (now almost three years old) moves in with the baby's father, causing Mary to lose her exemption from this provision. Mary reports this change to her eligibility worker, and because she is no longer exempt, not covered by a waiver, and not satisfying the work requirement, she uses up her first three countable months in May, June, and July, 1999. In August, 1999, Mary gets a job and works 80 hours, regaining her eligibility as explained below. When Mary loses her job at the end of August and returns to her food stamp office on September 1, she gets her second three countable months (also explained below) for September, October, and November, 1999. On December 1, 1999, Mary has still not found a job. Under a fixed approach, Mary's three-year period ran from November 22, 1996 to November 21, 1999. On November 22, 1999, Mary started a new three-year period. If she is otherwise eligible, Mary can receive three countable months of food stamps for December (1999), January, and February, 2000.

Under a rolling approach, on December 1, 1999, Mary's eligibility worker will look back three years to December 1, 1996 to see if Mary has used all of her allowable countable months. Mary's worker will find all of Mary's allowable countable months from May through November, 1999, so Mary will not be eligible until she becomes exempt, covered by a waiver, or until three years have elapsed between a total of three countable months. Assuming she is not exempt, covered by a waiver, or satisfying the work requirement, Mary will begin to be eligible in June, 2002, as the May, 1999 countable month drops off of the rolling period.

How can Mary be eligible in June 2002 when in fact Mary's eligibility worker will look back and see that Mary still has used five countable months (May dropped off the calendar, but Mary still received food stamps in June and July, and September, October and November 1999)? The law says, ''no individual shall be eligible * * * if, during the preceding 36-month period, the individual received food stamp benefits for not less than 3 months (consecutive or otherwise)'' during which he did not fulfill the work requirement, was exempt or covered by a waiver. The law also provides individuals the opportunity to receive an additional 3 months of food stamps if he regains eligibility by working 80 hours in a 30 day period. Therefore, the law actually provides an individual the opportunity to receive a total of 6 months of food stamps in a three-year period if the two periods are interrupted by a period of work. Given this ambiguity, the Department believes it is appropriate to allow the State agency to issue benefits to an individual who has used up his/her countable months, three years after receiving his/her first countable months benefits. Therefore, under the rolling period, as the first 3 (consecutive or otherwise) month period falls off the calendar, the individual can become eligible for another 3 (consecutive or otherwise) month period. In the example above, Mary will become eligible for her first three (consecutive or otherwise) months again in June 2002 as May 1999 falls off the calendar. She will only become eligible for her second three (consecutive) months in October 2002 as September 1999 falls off the calendar.

Under either the fixed or rolling approach, the outcome is the same; individuals who are not either exempt, covered by a waiver, or satisfying the work requirement will not receive food stamps for more than three months (six, under circumstances discussed below) in three years. Neither the statutory language nor the legislative history specifically address how to measure or track the three-year period. If the statutory language had referred to the preceding ''36 months,'' rather than the ''36-month period'' as it did, there would be no ambiguity, and State agencies could only measure the period as a ''rolling'' period. Allowing the use of a ''fixed'' period will not increase Program costs, it would be consistent with the provision's intent, and would be easier for many State agencies to administer. Given these factors and the ambiguity in the statutory language and legislative history, the Department believes it is appropriate to allow State agencies to choose either approach, and is proposing to do so. However, under the proposal, the State agency must apply its procedures consistently, and make sure that participants who are similarly situated are treated the same.

Under a fixed approach, there are a few areas where the State agency will have additional flexibility. The State agency can elect to administer separate three-year periods for individuals, or it can use the same three-year period for everyone. If the State uses individual-based periods, for non-exempt individuals, the periods would start on the date of application (but, as discussed below, not before the earlier of November 22, 1996, or the date the state notified recipients of this provision). For someone who is exempt from the provision, the State agency can

either start the three-year period at the date of application (so that the period runs during the period of exemption) or on the date the individual's exemption is removed. The State could also choose to use the same three-year period for everyone. As in the example above, the State had the same three year clock for everyone, regardless of when they applied or lost their exemption, which ran from November 22, 1996 through November 21, 1999. On November 22, 1999, everyone's slate is wiped clean and a new three year clock begins. Under either approach, non-exempt individuals who are not satisfying the work requirement will only get food stamps for three months in three years. The Department believes that the added flexibility of determining how to track a fixed three-year period will be useful to State agencies, who can develop tracking policies to suit their computer systems, other welfare reform initiatives, etc.

There is one important limitation on the three-year period which applies under both a fixed and a rolling approach. The statute mandates that the three-year period shall not include any time before the date the State notifies recipients of the application of this provision (the ''notification date''), or November 22, 1996 (the date that was three months after the date of enactment of the PRWORA), whichever is earlier. Therefore, if the State agency chooses a fixed three-year period, the start date cannot be before November 22, 1996, or the notification date, whichever was earlier. If the State agency elects to use a rolling three-year period, it cannot look back beyond either November 22, 1996, or the notification date, whichever was earlier. The proposed rule includes this limitation.

What Counts as ''Receiving'' Food Stamps?

Section 6(o) of the Act, subsequent to amendment by Section 824 of PRWORA makes individuals ineligible for food stamps if during the preceding 36-month period, the individual ''received food stamp benefits'' for more than three months during which time the individual was not either exempt, covered under a waiver, or satisfying the Food Stamp Program work requirement. An individual's participation in a particular month does not count toward the time limit unless he or she actually received some food stamps during that month. The statute does not require that the individual actually use his or her benefits in order for a month to be counted; it just requires that he or she receive them. The only significant issue that the Department must address in this context is how to handle a situation in which an individual was certified in error. As discussed below, the Department is proposing that when an individual is certified in error, the stamps be considered to have been ''received'' unless the erroneous benefits have been repaid.

In a situation in which an individual was mistakenly certified (e.g., a work sanction was incorrectly applied), the clear language of the statute would require that the month be counted because the individual received food stamps. Once a claim is established and the overissued benefits are repaid in full, counting the erroneously issued benefits as having been received would be inappropriate. A policy that ignores the actual receipt of food stamps based on the possibility that they might be repaid would be inconsistent with the intent of the provision and the statutory language. A policy that did not count erroneously issued benefits as having been ''received'' would be inconsistent with efforts to discourage clients from misrepresenting their circumstances. However, the Department recognizes the administrative complexity involved, and is therefore proposing that the State agencies may opt to treat benefits erroneously received as having been ''received'' unless or until they are repaid in full.

Administrative Requirements

The statutory language and legislative history are silent as to verification and reporting requirements, and how the income and resources of someone made ineligible by this provision should be handled for the rest of the household.

The statutory language of Section 6(o) is very specific as to the number of hours required to be worked in order to satisfy the work requirement (''20 hours per week, averaged monthly''). Because eligibility can hinge on the actual number of hours worked, the Department believes that it is necessary to verify an individual's work hours when that individual is meeting the requirement of this provision by working. None of the current mandatory verification items at 7 CFR 273.2(f)(1) would capture all work situations. Income must be verified, so paid work hours would probably be captured as part of the verification of income. But the Department is proposing to allow unpaid or ''in-kind'' work to satisfy the work requirement, and those items would not be captured in the verification of a household's income. Because the accurate assessment of an individual's work hours is crucial (both at initial certification and recertification) to the eligibility determination, the Department is proposing to make verification of work hours mandatory at certification and recertification for certain individuals who are subject to the time limit. The State agency should have information as to an individual's work hours if the individual is satisfying the work requirement by participating in a state-operated work or workfare program. Therefore, additional verification of work hours will not be necessary in those circumstances. However, the State agency may not have information about an individual's work hours if the individual is participating in a work or workfare program that is not operated by the State agency. The Department is therefore proposing that the verification requirement apply to individuals subject to the food stamp time limit who are satisfying the work requirement by working, or by combining work and work program participation, or by participating in a work or workfare program that is not operated or supervised by the State agency.

One other verification issue is raised when an individual indicates that he/she has participated in the food stamp program in another State. Though no national database exists now that would capture the number of ''countable months'' each participant has used, the Department is in the process of exploring the feasibility of designing one. In the meantime, the Department believes that it is not overly burdensome to require State agencies to check other States for the number of ''countable months'' an individual has used when the individual indicates that he/she has participated in those other states. Such a policy is consistent with Food Stamp procedures that require State agencies to verify anything that appears ''questionable.'' The Department does not believe, however, that it would make sense to require the new State to perform an independent analysis to determine how many countable months the individual has used. Therefore, the Department is proposing to allow a State agency to rely on another State agency's assertion as to how many countable months an individual has used. Verification of the number of countable months an individual has used in another State is not necessary at recertification, so the Department is proposing to make it mandatory only at initial certification (and when there is an indication that the individual participated in another state). To codify these policies, the Department is proposing to amend regulations at 7 CFR 273.2(f)(1) and 273.2(f)(8) to add

the new mandatory verification requirements.

As discussed above, the number of hours an individual works is crucial to the eligibility determination for most individuals subject to the time limit and satisfying the work requirement. None of the current requirements for reporting changes that occur during a certification period would necessarily capture changes in an individual's work hours. Because the Department is proposing to allow unpaid or ''in-kind'' work to satisfy the work requirement, reporting changes in income will not necessarily capture changes in the number of work hours. As part of its flexible approach to change reporting, the Department published a proposed rule on December 17, 1996 (61 FR 66233), which would provide State agencies with options for requiring changes to be reported. One of the options would require a change report when the number of hours worked changed more than 5 hours a week, and the change is expected to continue for more than a month. Even this requirement will not capture a small change in the number of hours worked, which could affect eligibility. The Department believes that because hours worked are so critical to the eligibility determination for individuals subject to the time limit, it must require that changes in work hours be reported. Therefore, the Department is proposing to require that individuals subject to the time limit must report changes in work hours that bring the individual below 20 hours per week, averaged monthly. The Department is proposing to amend 7 CFR 273.12(a)(1) accordingly.

Another reporting issue is whether or not a household must report when an able-bodied adult without dependents obtains or loses employment, thus becoming eligible or ineligible. For example, if an individual is ineligible because he/she has used up his/her countable months, and then gets a job and works 80 hours in a 30 day period, he/she becomes eligible. The regulations at 273.12(a) require that a household report changes in the source or amount of gross monthly income and changes in household composition such as the addition or loss of a household member. Policy memo 86–7 further addresses this issue and states that households are required to report changes during the certification period which affect the nonhousehold status of members, for example, when a full-time student quits college or increases part-time employment from 15 hours to 20 hours a week, or a household member marries a live-in attendant or begins to purchase and prepare food with a nonhousehold member. A household must report these changes because they may affect the household's eligibility or allotment. Therefore, as the regulations and current policy already address this issue, the Department is not proposing additional household composition reporting requirements specific to able-bodied adult without dependents.

Another issue that arises in this context is how to handle an unreported job. Section 6(o)(2)(A) of the Act provides that an individual's participation counts toward the time limit during times when the individual ''did not work 20 hours or more per week.* * *'' If an individual was working 20 hours per week but did not report the job, the individual may have received benefits erroneously (or a higher allotment that he or she should have received), but the individual was working 20 hours per week, and so the participation should not count toward the time limit. Existing policy would require that when an unreported job is discovered, the State agency must count the unreported income, recalculate the household's eligibility and benefit level, and establish claims as appropriate. But the State agency must also consider the individual to have been ''working,'' and so not count those months of participation if the work requirement was being satisfied with an unreported job. The Department has incorporated this policy into its proposal.

The final administrative issue is the treatment of an ineligible individual's income and resources. In other contexts, the Department handles the nonhousehold member's income and resources in one of three ways. The income and resources of the nonhousehold member are either counted in full as available to the household, excluded from those of the household except to the extent that they are actually contributed to, or jointly owned by, eligible household members, or a pro rata share of the individual's income and all of the individual's resources are counted as available to the household. The Department recognizes that most of these individuals will not have much income or resources. However, if the ineligible able-bodied adult without dependents is purchasing and preparing food with the remaining members of the household, what little income he/she has should be counted at least in part as available to the household and the resources be counted in full. To count all of the income as available to the household would be more punitive than necessary. Therefore, the Department is proposing that the income and resources of someone made ineligible under this provision be handled according to § 273.11(c)(2); The resources of the ineligible able-bodied adult without dependents shall count in their entirety and a pro rata share of the income shall be counted as income to the remaining members. The remaining provisions of 273.11(c)(2) concerning deductible expenses and eligibility and benefit levels will also apply. In order to codify this policy, the Department is proposing a technical amendment to 273.1(b); section 273.11(c)(2) does not need to be amended.

Exemptions

Section 6(o) of the Act exempts from the otherwise generally applicable statutory time limit individuals who are: (1) under 18 or over 50 years of age; (2) medically certified as physically or mentally unfit for employment; (3) a parent or other household member with responsibility for a dependent child; (4) exempt from work registration requirements under section 6(d)(2) of the Act; or (5) pregnant. Periods of participation in the Food Stamp Program while an individual is exempt are not counted toward the individual's three-month limit. Therefore, exempt individuals may participate in the Food Stamp Program for as long as they are otherwise eligible. Eligibility workers should set certification periods as appropriate for the exemption. Two of the exemptions (age and pregnancy) need minor clarification; two of the exemptions raise substantial issues (the ''unfit for employment'' and the ''household member with responsibility for a child'' exemptions). As elsewhere in this proposed rule, the Department is seeking a balance between consistency and State agency flexibility in the context of these exemptions.

Section 6(o)(3)(A) of the Act exempts individuals who are ''under 18 or over 50 years of age.'' The Department would like to clarify that someone is ''over 50 years of age'' on his or her 50th birthday. On that day, the individual starts his or her 51st year, and so is ''over 50 years of age.'' Similarly, an individual loses the exemption on his or her 18th birthday. The provision also exempts pregnant women, and the Department would like to clarify that any trimester of pregnancy exempts a woman from this provision. However, to clarify and be consistent with the proposal to not count partial months, the Department is proposing that a month is not a countable month for able-bodied adult without dependents purposes if the individual is exempt for part of the month. For example, if an individual turns 18 on September 5, he retains his exemption for September, and his first countable month is

October. Or if an individual turns 50 in September, he will be exempt for the entire month of September. The provision incorporates by reference the work registration exemptions from subsection 6(d)(2) of the Act. Regulations at 7 CFR 273.7(b) already implement those exemptions, so they will not be addressed further in this rulemaking.

The Department would like to clarify that only those provisions of 7 CFR 273.7(b) that implement the section 6(d)(2) exemptions are incorporated by reference as exemptions to this provision.

Medically Certified as Physically or Mentally Unfit for Employment

Section 6(o)(3)(B) of the Act exempts individuals who are ''medically certified as physically or mentally unfit for employment.'' Nothing in the legislative history of this provision provides guidance in defining either ''medically certified,'' or ''unfit for employment.'' In crafting this exemption, Congress did not use the term ''disabled,'' which is defined in Section 3 of the Act, 7 U.S.C. 2012. Someone who is disabled as defined in the Act may be ''unfit for employment,'' but the language of this exemption is more broad. The concept of physical or mental ''fitness'' for employment, as distinguished from physical or mental ''disability,'' is found in the context of the work requirements that predate PRWORA. Section 6(d)(1)(A) of the Act defines the work requirements for ''physically and mentally fit'' individuals (emphasis added). Regulations that implement this provision (at 7 CFR 273.7(b)(1)(ii)) exempt individuals who are ''unfit for employment.'' It would not make sense for Congress to have intended two different meanings of ''unfit for employment'' in the context of exemptions from food stamp work requirements. It appears that the only difference between the ''unfit for employment'' exemption in section 6(d)(1)(A) of the Act (as implemented in 7 CFR 273.7(b)(1)(ii)) and the one in Section 6(o)(3)(B) of the Act is whether the condition is ''medically certified.''

Regulations at 7 CFR 273.7(b)(1)(ii) do not define ''unfit for employment,'' but set out verification requirements if the ''unfitness'' is not evident. Someone whose condition (and that the condition made him or her unfit for employment) was ''evident'' would not have to provide any verification in order to be entitled to the exemption. Under this rule, verification ''may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.'' The receipt of disability benefits is indirect proof that there has been a medical certification of a condition making the recipient unfit for employment. A statement from a physician or licensed or certified psychologist is certainly a ''medical certification.'' The Department believes that the verification requirement in this context is essentially a ''medical certification'' requirement. With no legislative history to indicate otherwise, the Department believes that it would not make sense to try to establish a new, separate definition of ''medically certified.'' The real distinction appears to be that under the work registration exemption, participants only have to furnish a medical certification if the condition (or its debilitating nature) is not evident. Section 6(o)(3)(B) of the Act requires medical certification in all cases. The verification requirement in 7 CFR 273.7(b)(1)(ii) is a reasonable definition of what ''medically certified'' might mean. In addition, it would not make sense for an individual to be considered ''unfit for employment'' under 7 CFR 273.7(b)(1)(ii) after providing the requisite verification, but not be considered ''unfit for employment'' in this context, even after providing the same verification. For these reasons, the Department is proposing to incorporate the exemption in 7 CFR 273.7(b)(1)(ii), as the ''unfit for employment'' exemption, except that the verification (medical certification) will be mandatory.

Parent or Other Household Member With Responsibility for a Dependent Child

Section 6(o)(3)(C) of the Act exempts an individual who is ''a parent or other member of a household with responsibility for a dependent child.'' This exemption raises two issues: what is the age of the child that entitles certain household members to the exception; and assuming a qualifying ''child,'' which household members can qualify for the exemption.

The Department is proposing that in this context ''child'' mean any individual under age 18. The Department has considered proposing a lower age, but could find no basis in the Act or the regulations for any qualifying age other than six. Section 6(d)(2) of the Act exempts parents or other household members responsible for the care of a child under age six from the work requirements that predate the PRWORA. However, as mentioned above, Section 6(o)(3)(D) of the Act exempts from its provisions anyone who is exempt under Section 6(d)(2) of the Act. Clearly Congress would not have created a separate exception in Section 6(o)(3)(C) for parents or other household members with ''responsibility for a dependent child'' if it intended that the ''child'' be under age six. Without any legislative history on the issue, or any other statutory or regulatory basis, the Department believes that selecting an age other than that of majority would be arbitrary. The Department also believes that this is one area in which consistency is important, and so is proposing to consider anyone under age 18 a ''child'' for these purposes.

The statutory language exempts any parent of a child household member. Therefore, if a food stamp household consists of two parents and a child, the child is exempt as being under 18, and both parents are exempt under the ''parent'' exemption. As in other contexts, the Department is proposing to include adoptive and stepparents in the definition of ''parent.''

The provision also exempts an individual who is not a parent, but who is a member of the household ''with responsibility for'' a child. The Department recognizes that there will be many situations in which non-parent adults have responsibilities for child household members. A grandparent may provide most of the financial support for the child, an unrelated household member may be the child's primary caretaker, etc. The statutory language did not limit the number of household members that could be exempted under this provision. The Department believes it would be administratively burdensome to require the State agency to evaluate the exemption on a case-by-case basis to determine whether an individual has ''responsibility'' for a dependent child. Accordingly, the Department is proposing that whenever there is a child under 18 in the household, no adult in the household would be subject to the work requirements.

Regaining and Maintaining Eligibility

Section 6(o)(5) of the Act allows an individual who has ''used up'' his or her countable months to regain eligibility if, during a thirty-day period, the individual works 80 or more hours, participates in and complies with a work program for 80 or more hours (as determined by the State agency), or participates in and complies with a workfare program. Someone who has regained eligibility under this provision may remain eligible as long as he or she continues to satisfy the work requirement (or is exempt or covered by a waiver). The terms ''work program''

and ''workfare'' have the same meaning as in the discussion of the general rule. The discussion as to what will qualify as ''work'' (volunteer or ''in kind'' work) is also applicable in this context, and the Department's proposal reflects that. The provision allowing individuals to regain eligibility raises three new issues: what is the ''30-day period,'' whether the 80 hours of work or participation in a work program has to be completed before the individual can receive benefits, and whether the individual can regain eligibility more than once in a three-year period. The Department would also like to clarify that someone who becomes ineligible under the time limit, but later becomes exempt or covered by a waiver, does not have to regain eligibility under this provision (i.e., he or she does not have to work 80 hours in a thirty-day period, etc.). He or she is exempt from the provision, and can begin or continue to receive benefits as long as the exemption or waiver lasts and the individual is otherwise eligible.

The statutory language requires that the 80 hours of work, etc. be completed ''during a 30-day period.'' The provision does not specify that the work must be done during a calendar month, but it does imply that the thirty-day period be uninterrupted. To allow otherwise would distort the plain meaning of the language. The Department is therefore proposing to define ''30-day period'' as ''30 consecutive days.'' A second issue in the context of the thirty-day period is whether the thirty days has to immediately precede the date of reapplication. There is no requirement in the statutory language that the thirty-day period immediately precede the reapplication. Elsewhere in the provision, Congress specified reference to the ''preceding'' time period, and it certainly could have in this context if it had intended that the 80 hours of work (or work program, etc.) be completed immediately prior to the reapplication. The Department is therefore proposing that someone can regain eligibility by working 80 hours, etc. during any 30 consecutive days.

When an individual applies for benefits and completes the ''cure'' for regaining eligibility during the application period by either working or participating in a work program, the Department is proposing to allow States the option of either providing benefits back to the date of application or prorating benefits from the date the cure is complete. For example, for an individual who uses up his or her three countable months, reapplies on December 1, but does not complete his or her 80 hours of work until the 15th of December, the State agency may either provide benefits back to December 1st , or prorate them from December 15th. However, the Department would like to stress that this proposed policy is for individuals regaining eligibility by working or participating and complying in a work program. An individual who regains eligibility by participating in and complying with workfare, and whose workfare obligation is based on an estimated monthly allotment prorated to the date of application, then the allotment issued must be prorated back to this date. Section 20 of the Act, 7 U.S.C. 2029, is clear that food stamps are compensation for work performed in a workfare program. For example, if an individual has used up his first three months, then applies for food stamps, and is assigned to a workfare slot prior to determination of eligibility, and he then completes his workfare obligation within 30 days, his benefits shall be calculated to the date of application. The Department believes that this interpretation is the only one consistent with the Act regarding workfare. One additional clarification is proposed in the regulatory language. The statutory language of Section 6(o)(5) does not require individuals participating in workfare to work 80 hours in a 30-day period because under a workfare program, an individual's work obligation is linked with the amount of the individual's food stamp benefit. The language requires that an individual ''participate in and comply with'' a workfare program during a 30-day period, not that an individual participate in a workfare program for 30 days, which would essentially require a 30-day waiting period. The Department is proposing to clarify that when an individual is regaining eligibility through a workfare program, the individual must be considered to have completed the cure when the individual has completed the required number of hours of work.

The last issue in this context is whether an individual can regain eligibility and then maintain eligibility under this provision more than once during the three-year period. Neither the statutory language nor the legislative history address this issue. (The statutory language does prohibit someone from using his or her second three ''countable months'' more than once, as discussed below.). As mentioned above, Section 6(o)(5) of the Act allows an individual who has ''used up'' his or her countable months to regain eligibility if, during a thirty-day period, the individual works 80 or more hours, participates in and complies with a work program for 80 or more hours (as determined by the State agency), or participates in and complies with a workfare program. Someone who has regained eligibility under this provision may remain eligible as long as he or she continues to satisfy the work requirement (or is exempt or covered by a waiver). This provision is a time limit for individuals who are not working, and individuals can only regain eligibility by working (or participating in a work program or workfare) and then maintain eligibility by continuing to work. Allowing individuals to be able to regain and maintain eligibility whenever and as often as they meet the 80 hour/30-day work requirement would encourage individuals to continue to look for work even after having used up their countable months. The Department is therefore not proposing to limit the number of times an individual can regain and maintain eligibility under this provision.

Eligibility for the Additional Three ''Countable Months''

Section 6(o)(5)(C) allows an individual who has regained eligibility (by working 80 hours in a 30-day period, etc.) and then lost the job (or workfare slot, etc.) to be eligible for an additional period of three countable months. The additional three months must be consecutive, and they start on the date the individual notifies the State agency that he or she is no longer meeting the work requirement. An illustration will help explain this general concept. Joe uses up his three countable months, and becomes ineligible for food stamps. Two months later, he gets a job and works 80 hours in a thirty-day period, regaining eligibility. For six months, Joe works at least 20 hours per week. He is satisfying the work requirement, so he is maintaining his food stamp eligibility. Joe is laid off in the seventh month of Joe's job, and notifies his eligibility worker immediately. Starting the day he notifies his worker, Joe is eligible for an additional three consecutive ''countable'' months of food stamps. That is, even though he already used up his (first) three countable months, he is eligible for up to three consecutive months without having to either fulfill the work requirement (20 hours per week, etc.), be exempt (physically or mentally unfit for employment, etc.), or be covered by a waiver. There are two significant issues that arise only in the context of this additional three countable months: the additional countable months are consecutive, and they start the date the client notifies the

State that he or she is no longer meeting the work requirement.

Section 6(o)(5)(C) of the Act specifies that, although the first three countable months can be consecutive or otherwise, the second three countable months are consecutive. The plain meaning of this language is that the second three countable months cannot be used in a piecemeal fashion, they must be used consecutively. For example, Sue has just lost her job, and becomes eligible for the second three countable months on January 1, so (if she is otherwise eligible) her second three countable months are January, February, and March. If she gets a job in March, she essentially ''forfeits'' her last countable month (a month when she can receive food stamps without working, etc.) because she cannot ''save'' the month for use some time later when she is no longer working.

The statute not only requires that the additional three countable months be consecutive, but it requires that they start ''the date the individual first notifies the State agency'' that the individual is no longer fulfilling the work requirement. That means that even if the individual cannot take advantage of the second three countable months (e.g., he or she is under a work sanction or temporarily resource ineligible), the additional three month ''window'' opens the date the individual notifies the State that he or she is no longer working (and because it has to be three consecutive months, it closes exactly three months later). To illustrate, if John notifies the State agency on January 1 that he has quit his job (without good cause), he is potentially eligible under this provision for a period of three consecutive months starting January 1. However, Section 6(o)(6) of the Act states that nothing in its provisions makes an individual eligible for food stamps if he or she is not otherwise eligible for benefits. Therefore, the provisions in Section 6(o) that make an individual eligible do not override other provisions of the Food Stamp Act and implementing regulations that make an individual ineligible. In the illustration, John is subject to a 90-day voluntary quit sanction under 7 CFR 273.7(n). His sanction would expire on April 1, but his second three-month window of eligibility was only open from January 1 (the day he notified the State agency that he was no longer working) through the end of March (three consecutive months later). John has forfeited the opportunity to use his additional three countable months (at least this time).

There are two more issues arising from the provision mandating when the additional three months of eligibility start. Section 6(o)(5)(C) mandates that the additional three countable months start the date the individual ''first notifies the State agency'' that he or she is no longer meeting the work requirement. Therefore, even if the individual does not report the job loss right away, the additional three month ''window'' opens when the individual notifies the State agency.

Although this policy might not provide incentive to report the job loss immediately, the Department cannot ignore the plain language of the statute. Therefore, the Department's proposal mirrors the statutory requirement that eligibility for the additional three countable months starts the day the client first notifies the State agency that he or she is no longer meeting the work requirement.

There is one circumstance when the Department believes that a departure from this general rule is necessary. If an individual is meeting the work requirement by participating in a work program or workfare, and at some point no longer meets the requirements of the work or workfare program (such that he or she could be eligible for the additional three months), in most cases the State agency becomes aware of this information and is required by work rules to take an action on the individual's case. In most cases the State agency is either supervising the workfare or work program and is aware that the individual is no longer meeting the work requirements or is notified by the agency that is. Once the State agency becomes aware that the individual is no longer meeting the work requirements, the eligibility worker will send the individual a notice explaining that he or she no longer meets the work requirements (of 7 CFR 273.7), and advise him of his options. The Department believes that in these cases, when the State agency becomes aware that the individual is no longer meeting the work requirement because the State agency was operating or supervising the work or workfare program, or was notified by the agency that was, it would be meaningless to require the individual to contact his or her eligibility worker in order to trigger the eligibility for the additional three months. The individual may not even be aware that he or she is no longer meeting the work requirement. When the State agency is the entity with information as to whether the work requirement is being met, the additional three month period should start on the date of the notice. Accordingly, the Department is proposing that when an individual is meeting the work requirement by participating in a work or workfare program, the additional three-month period will start the date the State agency notifies the individual that he or she is no longer meeting the work requirements.

The statute also makes it clear that individuals may only ''receive benefits'' for a second three countable months once in a three-year period. Therefore, although individuals may regain eligibility (by working 80 hours in a 30-day period, etc.) many times, they can only take advantage of the second three countable months once. Individuals can therefore get food stamps for no more than six countable months in a three-year period, but in order to become eligible for the second three countable months, the individual has to have worked at least 80 hours in a thirty-day period. Significantly, the statute uses the following language: ''an individual shall not *receive any benefits* pursuant to * * * [the additional three month provision] for more than a single 3-month period in any 36-month period.'' (emphasis added.) Therefore, using the example above, although John has essentially forfeited the second three countable months (because of the voluntary quit sanction), he may become eligible again for the additional three consecutive countable months because he never received benefits for that period. As before, any three consecutive month window would open the day John first notifies the State agency that he has lost his job, and would close three months later. In the example, after John's voluntary quit sanction expires (and he has forfeited the opportunity to use the three consecutive countable months), he finds a new job on May 1. He works 80 hours in a thirty-day period, regaining his eligibility. On August 1, John is laid off from the new job, and notifies his eligibility worker.

John is now eligible for three consecutive countable months starting August 1. After John has received any benefits during this second three-month window, he will have to either meet the work requirement, become exempt, or be covered by a waiver in order to participate.

Waivers

Section 6(o)(4) of the Act allows the Department, at the request of a State agency, to waive the time limit for any group of individuals if the Secretary determines that the area in which the individuals reside has an unemployment rate of over ten percent, or ''does not have a sufficient number of jobs to provide employment for the individuals.'' The Department issued guidance for States seeking waivers on

December 3, 1996. The guidance contained basic procedures for applying for waivers, identified data sources which could be used to substantiate requests, and described some approaches that could support a ''lack of sufficient jobs'' waiver. This proposed rule does not substantially change the policies expressed in the December 3, 1996 guidance. Because of the nature of the waiver approval process and the many factors involved in the analysis of whether a waiver is appropriate, the Department cannot specify which waiver requests it will approve and which it will not. This proposed rule is intended merely to provide a framework for waiver requests.

The waiver authority raises several issues: data required to justify a waiver, the duration of waivers, defining an area, and factors to indicate a lack of sufficient jobs. Other than the limits discussed here, FNS is not proposing any specific procedures for applying for waivers. FNS will expedite the approval process, and intends that it be as simple as possible. Consistent with these goals, FNS is proposing that in areas for which the State has certified that data from the Bureau of Labor Statistics (BLS) show an unemployment rate above 10 percent, the State may begin to operate the waiver at the time the waiver request is submitted. FNS has proposed to retain the ability to require any modifications that might be required in order to meet the requirement of the statute. For example, if the most recent data (that might not have been available to the State at the time of the request) shows that some areas no longer have unemployment rates above 10 percent, FNS must be able to reexamine the basis for waivers in those areas. The terms of any such modification of the waiver would be negotiated with the State agency. Allowing States to begin to operate such waivers would provide immediate relief to areas long suffering with high unemployment rates. All other waivers will need prior approval before they take effect.

Kinds of Data Needed

With respect to the kinds of data required to support a waiver, established Federal policy requires Federal executive branch agencies to use the most recent National, State or local labor force and unemployment data from the Bureau of Labor Statistics (BLS) for all program purposes. This policy is contained in Statistical Policy Directive No. 11, issued by the Office of Federal Statistical Policy Standards, Office of Management and Budget. This policy ensures the standardization of collection methods and the accuracy of data used to administer Federal programs. In accordance with this policy, the Department is proposing that States seeking waivers for areas with unemployment rates higher than 10 percent be required to rely on standard BLS data or methods. To the extent that a ''lack of sufficient jobs'' waiver is also based on labor force and unemployment data, the Department is proposing that the labor force and unemployment data also be based on BLS data or methods.

Duration of Data and Duration of Waivers

Another issue related to the data required to support a waiver is how recent the data and analysis must be, and whether the data must cover a certain period before a waiver will be granted. Closely related is the issue of the duration of the waivers. Unemployment rates fluctuate from month to month, with fluctuations likely to be larger for estimates based on smaller areas. Data must be recent because a waiver must be based on the job market as it then exists. Stale data could mask areas in which the labor market has recently declined, or overestimate the unemployment rate in an area that is experiencing job growth. If requested, FNS will automatically grant a waiver in any area in which the average unemployment rate in the preceding 12 months is greater than 10 percent. However, the Department will not require a 12-month average to approve a waiver for two reasons: a 12-month average may mask portions of the year when the unemployment rate rises above or falls below 10 percent. In addition, requiring a 12-month average before a waiver could be approved would necessitate a sustained period of high unemployment before an area became eligible for a waiver. However, although allowing States to obtain a year-long waiver based on fewer months of data might be more responsive to early labor market signals, it could be an over response to a seasonal problem or a short term aberration. Therefore, the Department is proposing that in general, the duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State must show that the basis for the waiver is not a seasonal or short term aberration. In general, the Department will not approve waivers for more than one year. In addition, States in areas with predictable seasonal variations in unemployment may use historical trends to anticipate the need for waivers for certain periods. For example, if the pattern of seasonal unemployment is such that an area's unemployment rate typically increases by two percentage points in January, February, and March, and the area's unemployment rate is currently 9 percent, a State may request a waiver for this area based on its current rate and historical trends. The period covered by the waiver would then coincide with the period of projected high unemployment.

Defining an ''Area''

With respect to the question of what ''areas'' can receive waivers, the Department is allowing States broad discretion in defining areas that best reflect the labor market prospects of Program participants and State administrative needs. In general, the Department encourages States to consider requesting waivers for areas smaller than the entire State. Statewide averages may mask slack job markets in some counties, cities, or towns. Accordingly, States should consider areas within, or combinations of, counties, cities, and towns. The Department also urges States to consider the particular needs of rural areas and Indian reservations. Although the Department is proposing to allow States flexibility in defining areas to be covered by waivers, the supporting data must correspond to the requested area (e.g., a county-wide waiver must be supported by county-wide data).

Unemployment figures for many local areas based on standard BLS data or methods are readily available. Through its Local Area Unemployment Statistics (LAUS) program, BLS works in concert with State employment security agencies to estimate unemployment rates for all states and counties, all cities with a population of 25,000 or more, all cities and towns in New England, and all metropolitan and small labor market areas in the United States. In addition, State employment security agencies can use standard BLS methods to generate unemployment rates for smaller geographic areas and special geographic areas such as Indian reservations, as long as the boundaries of those areas coincide with the boundaries of a group of census tracts. While standard methods can be used to estimate unemployment rates for smaller areas, the estimates will be less reliable. A list of State employment security agency contacts can be accessed through the BLS LAUS home page (found at http://stats.bls.gov:80/lauhome.htm). Monthly State and local area unemployment rates are also readily available from a variety of published sources. Current data can be obtained via the LAUS home page,

the LAUS program, BLS regional offices, or the State's employment security agency.

Lack of Sufficient Jobs

Section 6(o)(4)(A)(ii) of the Act allows the Department to waive the time limit for a group of individuals if the area in which the individuals reside ''does not have a sufficient number of jobs to provide employment for the individuals.'' The legislative history does not provide guidance on what types of waivers the Department should approve under this standard, and there are no standard data or methods to make the determination of the sufficiency of jobs. States requesting waivers are therefore free to compile evidence and construct arguments to show that in a particular area, there are not enough jobs for individuals who are affected by the time limit. However, as described in the December 3, 1996, guidance, some indicators that an area has insufficient jobs are: if the area is on the U.S. Department of Labor's (DOL) Employment and Training Administration's list of labor surplus areas; if the area qualifies for extended unemployment benefits; or if the area has a falling ratio of employment to population. No particular approach is required. Because waivers are approved based on current labor market conditions, evidence and data should be the most recent available to the State. The Department will make the decisions on a case-by-case basis.

Implementation

While most of the provisions of PRWORA were effective, and required to be implemented on August 22, 1996, some of the provisions in this rule have different statutory implementation dates. Section 115 (42 U.S.C. 862a), denial of benefits for drug-related convictions, was required to be implemented July 1, 1997, unless the State submitted a TANF plan to DHHS, in which case the effective date of Section 115 was the date the TANF plan was received by DHHS. In no event may State agencies disqualify an individual for a conviction occurring on or before August 22, 1996. States may also opt out of Section 115 by legislative action.

Sections 829 and 911 of PRWORA (Section 8(d) of the Act and 42 U.S.C. 608a) are mandatory and were required to be implemented on August 22, 1996, for all reductions in an assistance program's benefits initiated on or after that date for failure to perform a required action or for fraud. Section 819 of PRWORA (Section 6(i) of the Act) regarding comparable disqualifications is optional and, therefore, effective when the State chooses to implement it; but disqualifications imposed prior to August 22, 1996, shall not be imposed for food stamp purposes. The provisions in 42 U.S.C. 404(i) and (j) (Section 103(a) of PROWRA) are optional and, therefore, effective when the State chooses to implement them, but not prior to the State's receipt of a TANF block grant.

Pursuant to Section 824 of the PRWORA, (7 U.S.C. 2015(o)) the time limit for able-bodied adults is effective the date the State notifies recipients of the application of the time limit, or November 22, 1996 (the date that was three months after the date of enactment of the PRWORA), whichever is earlier.

The Department is proposing that the changes made by this rule would be effective and implemented no later than the first day of the month 180 days after publication of the final rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are proposed to be amended as follows:

1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (c)(1)(vii) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) Disclosure. (1) * * *

(vii) Local, State or Federal law enforcement officers, upon written request, for the purpose of obtaining the address, social security number, and, if available, photograph of any household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of a New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall also provide information regarding any household member, upon the official request of a law enforcement officer, necessary for the conduct of an official duty, such as apprehension or investigation, related to the any of the above-described individuals.

* * * * *

3. In § 272.2, new paragraphs (d)(1)(xiii) and (d)(1)(xiv) are added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) *Planning documents.* (1) * * *

(xiii) If the State agency chooses to implement the optional provisions specified in (273.11(l), (m), and (n) of this chapter, the Plan's attachment shall include the options selected, guidelines to be used, and specify how the income of any disqualified individuals will be treated.

(xiv) If the State agency chooses to implement the optional provisions specified in (273.11(q), (r), and (s) of this chapter, the Plan's attachment shall include the options selected, and procedures to be used. The plan shall also include a description of the safeguards the State agency will use to restrict the use of information collected by a State agency in implementing the optional provision contained in § 273.11(r) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, new paragraphs (b)(2)(viii), (b)(2)(ix), (b)(2)(x), (b)(2)(xi), (b)(2)(xii), and (b)(2)(xiii) are added to read as follows.

§ 273.1 Household concept.

* * * * *

(b) *Nonhousehold members.* * * *

(2) * * *

(viii) *School attendance requirements.* At State agency option, individuals who are disqualified in accordance with the school attendance provisions of § 273.11(m) and (n).

(ix) Individuals convicted of drug-related felonies. Individuals who are ineligible under § 273.11(o) because of a drug-related felony conviction.

(x) *Individuals disqualified from other means-tested programs.* At State agency option, individuals who are disqualified in another assistance program in accordance with § 273.11(l).

(xi) *Fleeing felons.* Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under § 273.11(p).

(xii) *Individuals ineligible because of child support issues.* Individuals disqualified for failure to cooperate with

child support enforcement agencies in accordance with § 273.11(q) or (r), or for being delinquent in any court-ordered child support obligation in accordance with § 273.11(s).

(xiii) *Able-bodied adults who have exceeded the time limit.* Persons ineligible under § 273.24, the time limit for able-bodied adults.

* * * * *

5. In § 273.2:

a. Two new paragraphs (f)(1)(xiv) and (f)(1)(xv) are added.

b. Paragraph (f)(8)(i)(C) is redesignated as paragraph (f)(8)(i)(D), and a new paragraph (f)(8)(i)(C) is added.

The additions read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(xiv) *Additional verification for able-bodied adults subject to the time limit.* (A) *Work hours.* For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

(B) *Countable months in another state.* For individuals subject to the food stamp time limit of § 273.24, the number of countable months (as defined in § 273.24(b)(1)) an individual has used in another State shall be verified if there is an indication that the individual participated in that State. The State agency may accept another State agency's assertion as to the number of countable months an individual has used.

(xv) *Verification of applicants fleeing to avoid prosecution or custody for felonies.* The State agency shall establish a system for verifying whether applicants or participants are subject to disqualification under the provisions of § 273.11(p) based on their possible status as individuals fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law, or fleeing to avoid prosecution or custody for felonies; or are subject to disqualification under § 273.11(o) as individuals convicted of drug-related felonies.

* * * * *

(8) *Verification subsequent to initial certification.** * *

(i) *Recertification** * *

(C) For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

* * * * *

6. In § 273.9, paragraph (b)(5)(i) is revised in its entirety to read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(5) * * *

(i) Moneys withheld from an income source, or moneys received from the income source, which are voluntarily or involuntarily returned to repay a prior overpayment from that income source, shall not be counted as income provided that the overpayment was not excludable under paragraph (c) of this section. However, this exclusion shall not apply to means-tested public assistance income sources when the overpayment was caused by the household.

* * * * *

7. In § 273.11:

a. The introductory text of paragraphs (c), (c)(1) and (c)(2) are revised.

b. Paragraph (c)(3)(ii) is revised.

c. Paragraph (k) is revised.

d. Paragraphs (l), (m), (n), (o), (p), (q), (r), and (s) are added.

The additions and revisions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of certain nonhousehold members.* During the period of time that a household member cannot participate for the reasons addressed in this section, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section. The State agency may opt to treat individuals disqualified under paragraph (l), (m), (n), (q), (r), or (s) of this section under either paragraph (c)(1) or (c)(2) of this section.

(1) *Intentional Program violation, felony drug conviction, or fleeing felon disqualifications, and workfare or work requirement sanctions.* The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of a disqualification for an intentional Program violation, a felony drug conviction, their fleeing felon status, noncompliance with a work requirement of § 273.7, or imposition of a sanction while they were participating in a household disqualified because of failure to comply with workfare requirements shall be determined as follows:

* * * * *

(2) *Ineligible alien, SSN disqualifications and ineligible ABAWDs.* The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for being an ineligible alien, for refusal to obtain or provide an SSN, or for meeting the time limit for able-bodied adults without dependents shall be determined as follows:

* * * * *

(3) *Reduction or termination of benefits within the certification period.* * * *

(ii) *Disqualified or determined ineligible for reasons other than intentional Program violation.* If a household's benefits are reduced or terminated within the certification period for reasons other than an intentional Program violation disqualification, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

* * * * *

(k) *Reduction of public assistance benefits.* If the benefits of a household that is receiving public assistance are reduced under a Federal, State, or local means-tested public assistance program because of the failure of a household member to perform an action required under the assistance program or for fraud, the State agency shall not increase the household's food stamp allotment as the result of the decrease in income. In addition to prohibiting an increase in food stamp benefits, the State agency may impose a penalty on the household that represents a percentage of the food stamp allotment that does not exceed 25 percent. Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, or failure to comply with purely procedural requirement such as failure to submit a monthly report for the other program or failure to reapply for continued assistance under the other program, shall not be considered a failure to perform an action required by an assistance program for purposes of

this provision. This provision shall not be applied at the time of initial application for assistance. It shall be applied if the person was receiving such assistance at the time the reduction was imposed and to reductions imposed at the time of application for continued benefits if there is no break in participation. The person does not have to be certified for food stamps at the time of the failure to perform a required action for this provision to apply. Public assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.

(1) For purposes of this provision a Federal, State, or local ''means-tested public assistance program'' shall mean any public or assisted housing under Title I of the United States Housing Act of 1937; any State program funded under part A of Title IV of the Social Security Act; any program for the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act; and State and local general assistance as defined in § 271.2 of this chapter. This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information. The State agency, rather than the household, shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(2) The prohibition on increasing food stamp benefits applies for the duration of the reduction in the assistance program, and shall be concurrent with the reduction in the other assistance program to the extent allowed by normal food stamp change processing and notice procedures.

(3) The State agency shall determine how to prevent an increase in food stamp benefits. Among other options, the State agency may increase the assistance grant by a flat percent, not to exceed 25 percent, for all households that fail to perform a required action in lieu of computing an individual amount or percentage for each affected household.

(4) If the allotment of a household is reduced under Title IV–A of the Social Security Act, the State agency may use the same procedures that apply under Title IV–A to prevent an increase in food stamp benefits as the result of the decrease in Title IV–A benefits. For example, the same budgeting procedures and combined notices and hearings may be used, but the food stamp allotment may not be reduced by more than 25 percent.

(5) In no event shall the prohibition on increasing food stamp benefits apply for longer than 1 year. The State agency may lift the ban on increasing food stamp benefits at any time if the person becomes ineligible during the disqualification period for some other reason.

(6) If an individual who fails to perform a required action in a State or local assistance program moves within the State, the prohibition on increasing benefits shall be applied to the gaining household unless that person is ineligible for the assistance program for some other reason. If such individual moves to a new State the prohibition on increasing benefits shall not be applied. If an individual fails to perform a required action in a Federal program, and the individual moves, either interstate or intrastate, the State must verify the status and continue the disqualification if appropriate.

(l) *Comparable disqualifications.* If a disqualification is imposed on a member of a household for failure to perform an action required under a Federal, State, or local means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the Food Stamp Program. The program must to be authorized by a Federal, State, or local law, but the provision itself does not have to be specified in the law. A State agency may choose to apply this provision to one or more of these programs, and it may select the types of disqualifications within a program that it wants to impose on food stamp recipients. The State agency shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(1) For purposes of this section Federal, State, or local ''means-tested public assistance program'' shall mean any public or assisted housing under Title I of the United States Housing Act of 1937; any State temporary assistance for needy families funded under part A of Title IV of the Social Security Act; any program for the aged, blind, or disabled under Titles I, X, XIV, XVI, or XIX of the Social Security Act; Medicaid under XX of the Social Security Act; and State and local general assistance as defined in § 271.2 of this chapter.

(2) This provision shall not be applied at the time of initial application for public assistance. It shall be applied if the person was receiving such assistance at the time the disqualification was imposed and to disqualifications imposed at the time of application for continued benefits if there is no break in participation with the following exceptions. Reaching a time limit for time-limited benefits or having a child that is not eligible because of a family cap shall not be considered failures to perform an action required by an assistance program. In addition, this provision shall not apply to purely procedural requirements such as failure to submit a monthly report for the other program or failure to reapply for continued assistance under the other program. Assistance disqualifications that were imposed while the person was receiving assistance and are still in effect shall be applied to both food stamp applicants and recipients.

(3) In no event shall the disqualification be applied for food stamp purposes for longer than 1 year. The State agency may stop the disqualification at any time if the person becomes ineligible for assistance for some other reason.

(4) If a disqualification is imposed for a failure of an individual to perform an action required under a program under Title IV–A of the Social Security Act, the State may use the rules and procedures that apply under the Title IV–A program to impose the same disqualification under the Food Stamp Program.

(5) Only the individual who committed the violation may be disqualified for food stamp purposes even if the entire assistance unit is disqualified for Title IV–A purposes.

(6) A comparable disqualification for food stamp purposes shall be imposed concurrently with the disqualification in the assistance program to the extent allowed by normal food stamp processing times and notice requirements. For example, if the assistance disqualification is for June and July, and the State is unable to disqualify the person until July for food stamp purposes, the person would only be disqualified for July for food stamp purposes.

(7) If there is a pending disqualification for a food stamp violation and a pending comparable disqualification, they shall be imposed concurrently to the extent appropriate. For example, if the household is disqualified for June for a food stamp violation and an individual is disqualified for June and July for an assistance program violation, the whole household shall be disqualified for June and the individual shall be disqualified for July for food stamp purposes.

(8) The State agency may choose to count all or only a prorated amount of

the member's income and expenses as available to the household. All of the member's resources shall be counted as available to the household.

(9) After a disqualification period has expired, the person may apply for food stamp benefits and shall be treated as a new applicant or a new household member, except that a prior disqualification based on a food stamp work requirement shall be considered in determining eligibility.

(10) A comparable food stamp disqualification may be imposed in addition to any coupon allotment reductions made in accordance with paragraph (k) of this section.

(11) State agencies shall state in their Plan of Operation if they have elected to apply comparable disqualifications and indicate the options and procedures allowed in paragraphs (l)(1), (l)(2), (l)(3), (l)(4), (l)(8), and (l)(10) of this section which they have selected.

(m) *School attendance.* (1) A State agency may not apply a food stamp sanction to an adult because he or she fails to ensure his or her minor children attend school. However, if the benefits of a household are reduced under a TANF sanction due to the failure of an adult to ensure that his or her minor dependent children attend school as required by State law while the children are living with him or her, the State agency shall not increase the household's food stamp allotment as the result of the decrease in income in accordance with paragraph (k) of this section. In addition to prohibiting an increase in food stamp benefits, the State agency may impose a penalty on the household that represents a percentage of the food stamp allotment that does not exceed 25 percent in accordance with paragraph (k) of this section. Finally, if a member of a household is disqualified under the TANF program for failure to ensure that his or her minor dependent children attend school as required by State law while the children are living with him or her, the State agency may impose the same disqualification on the member of the household under the Food Stamp Program in accordance with paragraph (l) of this section.

(2) A State agency electing to reduce the household's benefits in accordance with paragraph (k) of this section or to apply a comparable disqualification in accordance with paragraph (l) of this section shall so specify in its Plan of Operation. If the member will be disqualified, the State agency shall specify in its Plan of Operation if all or a prorated share of the income of the disqualified member shall be counted as available to the household. All of the disqualified member's resources shall be counted as available to the household. If the food stamp allotment is to be reduced, the State agency shall specify in its Plan of Operation the method of reduction.

(n) *Secondary school diploma.* (1) A State agency may not apply a food stamp sanction to an adult because he or she is not working toward, or does not have, a secondary school diploma or its recognized equivalent. However, if the benefits of a household are reduced under a TANF sanction because an adult who is older than age 20 and younger than age 51 does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent, the State agency shall not increase the household's food stamp allotment as the result of the decrease in income in accordance with paragraph (k) of this section. In addition to prohibiting an increase in food stamp benefits, the State agency may impose a penalty on the household that represents a percentage of the food stamp allotment that does not exceed 25 percent in accordance with paragraph (k) of this section. Finally, if a member of a household is disqualified under the TANF the State agency may impose the same disqualification on the member of the household under the Food Stamp Program in accordance with paragraph (l) of this section.

(2) A State agency electing to reduce the household's benefits in accordance with paragraph (k) of this section or to apply a comparable disqualification in accordance with paragraph (l) of this section shall so specify in its Plan of Operation. If the member will be disqualified, the State agency shall specify in its Plan of Operation if all or a prorated share of the income of the disqualified member shall be counted as available to the household. If the food stamp allotment is to be reduced, the State agency shall specify in its Plan of Operation the method of reduction. All of the disqualified member's resources shall be counted as available to the household.

(o) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation.

(p) *Fleeing felons and probation or parole violators.* Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members.

(q) *Custodial parent's cooperation with the State agency.* (1) *Option to disqualify custodial parent for failure to cooperate.* At the option of a State agency, subject to paragraphs (q)(2) and (q)(4) of this section, no natural or adoptive parent or other individual (collectively referred to in this paragraph (q) as ''the individual'') who is living with and exercising parental control over a child under the age of 18 who has an absent parent shall be eligible to participate in the Food Stamp Program unless the individual cooperates with the State agency and the agency administering a Child Support Enforcement program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*).

(i) *Cooperation in obtaining support.* As a condition of eligibility for food stamps, the individual will be required to cooperate with the State agency in:

(A) Identifying and locating the absent parent of the child;

(B) Establishing the paternity of a child born out of wedlock;

(C) Obtaining support payments for the child or the individual and the child; and

(D) Obtaining any other payments or property due the child or the individual and the child.

(ii) *Cooperation.* Cooperation includes any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (q)(1)(i) of this section:

(A) Appearing at any office of the State or local agency or the child support agency as necessary prior to receipt of benefits (or, if necessary for recipients, at recertification) to provide verbal or written information, or documentary evidence known to, possessed by, or reasonably obtainable by the individual. State agencies shall specify the actions, documents and information required of individuals to cooperate in achieving the objectives specified in paragraph (q)(1)(i) of this section;

(B) Appearing as a witness at judicial or other hearings or proceedings;

(C) (*1*) In the establishment of paternity, providing the name of the putative father and sufficient additional information to enable the State agency, if reasonable efforts were made, to verify the identity of the person named, including such information as the putative father's social security number, date of birth, past or present address, telephone number, past or present place of employment, past or present school attended, names and addresses of parents, friends or relatives able to provide location information, or other information which could enable service of process on such person.

(*2*) The state agency shall establish criteria for determining cooperation in cases where the individual cannot reasonably be expected to know the required identifying information about the father (including, but not limited to, cases where long-term recipients do not know the required information due to a lapse of a long period of time since contact with the father.)

(D) Paying to the child support agency any support payments received from the absent parent.

(2) *Claiming good cause for noncooperation.* Prior to requiring cooperation under paragraph (q)(1) of this section, the State agency will notify the household in writing of the right to good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. Paragraph (q)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency.

(i) *Circumstances under which cooperation may be ''against the best interests of the child.''* Under circumstances described in either paragraph (q)(1)(ii)(A) or (q)(1)(ii)(B) of this section, the individual's cooperation would be against the best interests of the child, and so the individual's failure to cooperate is deemed to be for ''good cause.''

(A) The individual's cooperation in establishing paternity, security support, or identifying and providing information to assist the State agency in pursuing third parties potentially liable for medical services is reasonably anticipated to result in:

(*1*) Physical harm to the child for whom support is sought;

(*2*) Emotional harm to the child for whom support is sought;

(*3*) Physical harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it would reduce such person's capability to care for the child adequately; or

(*4*) Emotional harm to the parent or caretaker relative with whom the child is living which would reduce such person's capacity to care for the child adequately.

(B) At least one of the following circumstances exists, and the State agency believes that, because of the existence of that circumstance, proceeding to establish paternity, secure support, or to identify and provide information to assist State agencies in pursuing third party liability for medical services would be detrimental to the child for whom support is sought:

(*1*) The child for whom support is sought was conceived as a result of incest or forcible rape;

(*2*) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or

(*3*) The individual is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish him or her for adoption, and the discussions have not gone on for more than 3 months.

(ii) *Physical harm and emotional harm defined.* Physical harm and emotional harm must be of a serious nature in order to justify a finding of good cause under paragraph (q)(2) of this section. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

(iii) *Special considerations related to emotional harm.* For every good cause determination which is based in whole or in part upon the anticipation of emotional harm to the child, the parent or the caretaker relative, as provided for in this section, the State agency will consider the following:

(A) The present emotional state of the individual subject to emotional harm;

(B) The emotional health history of the individual subject to emotional harm;

(C) Intensity and probable duration of the emotional impairment;

(D) The degree of cooperation to be required; and

(E) The extent of involvement of the child in the paternity establishment, support enforcement activity or collection of information to assist the State agency in the pursuit of third parties to be undertaken.

(iv) *Proof of good cause claim.* (A) The State agency will make a good cause determination based on the corroborative evidence supplied by the household only after it has examined the evidence and found that it actually verifies the good cause claim.

(B) The individual who claims good cause must provide corroborative evidence within 20 days (or whatever time frame the State Agency employs under Title IV, Part A, of the Social Security Act) from the day the claim was made. In exceptional cases where the State agency determines the applicant or recipient requires additional time because of the difficulty of obtaining the corroborative evidence, the agency shall allow a reasonable additional period of time upon approval by supervisory personnel.

(C) A good cause claim may be corroborated with the types of evidence chosen by the State agency.

(D) Where a claim is based on the individual's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

(*1*) The State agency will investigate the good cause claim when the agency believes that the claim is credible without corroborative evidence and corroborative evidence is not available.

(*2*) Good cause will be found if the claimant's statement and the investigation satisfy the agency that the individual has good cause for refusing to cooperate.

(E) A determination that good cause exists will be recorded in the case file.

(v) *Review by the Child Support Enforcement Program agency.* Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the Child Support Enforcement Program agency the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendation from the Child Support Enforcement Program agency.

(vi) *Delayed finding of good cause.* The State agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish corroborative evidence and information.

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the custodial parent has not cooperated without good cause, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled to the extent specified in paragraph (c)(1) or (c)(2) of this section, depending on how the State agency opts to do it.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*)

(5) The period of disqualification ends once it has been determined that the individual is cooperating with the child support agency. The state agency must have procedures in place for re-qualifying such an individual.

(r) *Non-custodial parent's cooperation with child support agencies.* (1) *Option to disqualify non-custodial parent for failure to cooperate.* At the option of a State agency, subject to paragraphs (r)(2) and (r)(4) of this section, a putative or identified non-custodial parent of a child under the age of 18 (referred to in this subsection as ''the individual'') shall not be eligible to participate in the Food Stamp Program if the individual refuses to cooperate with the State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et. seq.*):

(i) In establishing the paternity of the child (if the child is born out of wedlock); and

(ii) In providing support for the child.

(2) *Guidelines for refusal to cooperate.* Refusal to cooperate includes:

(i) Refusal to appear for an interview;

(ii) Refusal to furnish requested documentation;

(iii) Refusal to cooperate with DNA testing; or

(iv) Failing to make payments to the Child Support Enforcement agency.

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the non-custodial parent has failed to cooperate, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled to the extent specified in paragraph (c)(1) or (c)(2) of this section depending on how the State agency opts to do it.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*)

(5) *Privacy.* The State agency shall provide safeguards to restrict the use of information collected by a State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*) to purposes for which the information is collected.

(6) The period of disqualification ends once it has been determined that the individual is cooperating with the child support agency. The State agency must have procedures in place for re-qualifying such an individual.

(s) *Disqualification for child support arrears.* (1) *Option to disqualify.* At the option of a State agency, no individualshall be eligible to participate in the Food Stamp Program as a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of a child of the individual.

(2) *Exceptions.* A disqualification under paragraph (s)(1) of this section shall not apply if:

(i) A court is allowing the individual to delay payment; or

(ii) The individual is complying with a payment plan approved by a court or the State agency designated under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*) to provide support of a child of the individual.

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual should be disqualified for child support arrears, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled to the extent specified in paragraph (c)(1) or (c)(2) of this section, depending on how the State agency opts to do it.

(4) *Collecting claims.* State agencies shall initiate collection action as provided for in § 273.18 for any month a household member is disqualified for child support arrears by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim and how the household may pay the claim. The household should also be informed as to the adjusted amount of income, resources, and deductible expenses of the remaining members of the household for the month(s) a member is disqualified for child support arrears.

8. In section 273.12, a new paragraph (a)(1)(vii) is added as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.*

* * *

(1) * * *

(vii) For able-bodied adults subject to the time limit of § 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly.

* * * * *

9. Section 273.16 is revised to read as follows.

§ 273.16 Disqualification for intentional program violation.

(a) *Administrative responsibility.* Each State agency shall be responsible for effectively and efficiently:

(1) Investigating instances of alleged intentional Program violation (IPV) and ensuring that appropriate cases are timely acted upon in accordance with the procedures outlined in this section;

(2) Establishing and/or utilizing a system to determine whether an individual has committed an IPV and therefore warrants disqualification from the Program. This may be through administrative and/or judiciary means, or a combination of both; and

(3) Disqualifying an individual from participation in the Program, where appropriate, in accordance with the procedures outlined in this section.

(b) *Definition of an IPV.* (1) An IPV occurs when an individual intentionally either makes a false or misleading statement, or misrepresents, conceals or withholds facts or commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, possession or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

(2) The determination of an IPV shall be based on clear and convincing evidence which demonstrates that the individual committed, or intended to commit, the violation.

(c) *Disqualification penalties.* (1) An individual found to have committed an IPV either through an administrative disqualification hearing (ADH) or by a Federal, State or local court, or who has signed either a waiver of his right to an ADH or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of one year for the first IPV, except as provided under paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) of this section;

(ii) For a period of two years upon the second occasion of any IPV, except as provided in paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) of this section; and

(iii) Permanently for the third occasion of any IPV.

(2) Except as provided under paragraph (c)(1)(iii) of this section, an individual found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of a controlled substance (as

defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of two years upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) An individual found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) An individual found by a Federal, State or local court to have trafficked benefits for an aggregate amount of $500 or more shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(5) Except as provided under paragraph (c)(1)(iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.

(6) The penalties in paragraphs (c)(2), (c)(3) and (c)(4) of this section may also apply in cases of deferred adjudication as described in paragraph (d)(4) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (c)(2), (c)(3) or (c)(4) of this section.

(7) If a court fails to impose a disqualification or a disqualification period for any IPV, the State agency shall impose the appropriate disqualification penalty specified in paragraph (c) of this section unless it is contrary to the court order.

(8) State agencies shall disqualify only the individual found to have committed the IPV, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(9) Even though only the individual is disqualified, the household is responsible for making restitution for the amount of any overpayment. All IPV claims shall be established and collected in accordance with the procedures set forth in § 273.18.

(10) The household shall be notified when it applies for benefits of the disqualification penalties if an individual intentionally violates the rules of the Program.

(11) The individual shall be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period shall continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

(d) *Bases for disqualification.* (1) *Administrative disqualification hearing (ADH).* (i) *Definition.* An ADH is a hearing undertaken in a non-judicial setting to determine whether an individual committed an IPV. This is one of two administrative State agency options for making this determination.

(ii) *ADHs and fair hearings.* (A) The State agency may combine a fair hearing with an ADH if the factual issues arise out of the same, or related circumstances.

(B) If the amount of the claim is determined at an ADH, the individual's household shall lose its right to a subsequent fair hearing on the amount of the claim.

(iii) *Advance notice of hearing.* (A) The State agency shall provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date an ADH has been scheduled.

(B) The notice shall contain at a minimum:

(*1*) The date, time, and place of the hearing;

(*2*) The charge(s) against the individual;

(*3*) A summary of the evidence, and how and where the evidence can be examined;

(*4*) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(*5*) A statement that the individual or representative will, upon receipt of the notice, have a specified number of days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(*6*) A warning that a determination of IPV will result in disqualification periods as determined by paragraph (c) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(*7*) A listing of the individual's rights;

(*8*) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the IPV in a civil or criminal court action, or from collecting any overissuance(s); and

(*9*) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) *Program participation while awaiting a hearing.* A pending ADH or a pending ADH decision shall not affect the individual's or the household's right to be certified and participate in the Program.

(v) *Conducting the ADH.* The State agency shall establish its own procedures for conducting an ADH incorporating the requirements in this section.

(vi) *Written notification and time frame for a decision.* The State agency shall provide written notification of its decision to the individual within 180 days after the discovery of the suspected violation or within 60 days of the date of the hearing, whichever is sooner.

(vii) *Local-level ADHs.* The State agency may choose to provide ADHs at the local level in some or all of its project areas with a right to appeal to a State-level hearing. If the household or the State agency wishes to appeal a local-level hearing decision, the appeal request must be filed within 15 days of the local-level hearing decision notice.

(viii) *Appeal of a State-level ADH.* The State-level decision shall be binding on the State agency. Also, no further administrative appeal procedure exists for the affected individual after an adverse State-level ADH. The individual, however, is entitled to seek relief in a court having appropriate jurisdiction.

(2) *Waived ADHs.* (i) *State agency option and establishing procedures.* A State agency may allow an accused individual to waive his/her right to an ADH in exchange for serving a disqualification period without necessarily admitting guilt. For a State agency which chooses this option, the procedures established shall conform with the requirements outlined in this section.

(ii) *Waiver requirements.* (A) The State agency shall develop its own waiver form and provide written notification to the individual suspected of IPV that he/she can waive his/her right to an ADH.

(B) The waiver/written notification shall clearly inform the individual that once the individual signs the waiver, he/she shall be disqualified from the Program in accordance with paragraph (c) of this section. A signed waiver shall have the same effect as a finding made after an ADH.

(iii) *Appeal of a signed waiver.* No further administrative appeal procedure shall be made available to the affected individual after he/she signs the waiver to the ADH. The individual, however, is

entitled to seek relief in a court having appropriate jurisdiction.

(3) *Court referrals.* A State agency may seek a determination of IPV and subsequent disqualification by referring appropriate cases for prosecution in a court of appropriate jurisdiction. This is one of two judicial State agency options for making this determination. The State agency shall establish procedures to determine the types of cases to be referred for prosecution.

(4) *Deferred adjudication.* (i) *State agency option and establishing procedures.* A State agency may allow an accused individual to sign a disqualification consent agreement for cases of deferred adjudication. For a State agency which chooses this option, the procedures established shall conform with the requirements outlined in this section.

(ii) *Written agreement.* The State agency shall develop its own disqualification consent agreement and provide written notification to the accused individual of the consequences of consenting to a disqualification (as defined in paragraph (c) of this section) as part of a deferred adjudication.

(5) *Conducting both a court action and an ADH.* State agencies may:

(i) Simultaneously begin and/or conduct an ADH and court action and may proceed with a court action whether or not a violation has been determined by the ADH; and

(ii) Conduct and make a determination based on an ADH for any case for which the court has not already returned a verdict.

(e) *Reporting requirements.* (1) Each State agency shall report to FNS information concerning individuals disqualified for IPV, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be submitted to FNS so that it is received no later than 30 days after the date the disqualification has taken effect.

(2) Each State agency shall report information concerning each individual disqualified for IPV in a format designed by FNS. The format shall include the individual's social security number, date of birth, and full name, the number of the disqualification (1st, 2nd or 3rd), the State and county in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified for IPV through a reporting system in accordance with procedures specified by FNS.

(4) All data submitted by State agencies will be available for use by any State welfare agency.

(i) State agencies shall, at a minimum, use the data for the following:

(A) To determine the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another political jurisdiction, and

(B) To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration.

(ii) State agencies may also use the data in other ways, such as the following:

(A) To screen all Program applicants prior to certification, and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(5) The disqualification of an individual for IPV in one political jurisdiction shall be valid in another.

(6) In cases where the disqualification for IPV is reversed by a court of appropriate jurisdiction, the State agency shall submit a report to purge the file of the information relating to the disqualification which was reversed in accordance with instructions provided by FNS.

(f) *Reversed disqualifications.* In cases where the determination of IPV is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the Program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17.

10. A new § 273.25 is added to read as follows:

§ 273.25 Time limit for able-bodied adults.

(a) *Definitions.* For purposes of the food stamp time limit, the terms below have the following meanings.

(1) *Fulfilling the work requirement* means:

(i) Working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours a week averaged monthly means 80 hours a month;

(ii) Participating in and complying with the requirements of a work program 20 hours per week, as determined by the State agency;

(iii) Working and participating in a work program for a total of 20 hours per week, as determined by the State agency; or

(iv) Participating in and complying with a workfare program.

(2) *Working* means:

(i) Work in exchange for money;

(ii) work in exchange for goods or services (''in kind'' work); or

(iii) Unpaid work under standards established by the State agency.

(3) *Work Program* means:

(i) A program under the Workforce Investment Act (Pub.L. 105–220);

(ii) A program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iii) An employment and training program, other than a job search or job search training program, operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under § 273.7(f). Such a program may contain job search or job search training as a subsidiary component as long as such component is less than half the requirement.

(4) *Workfare program* means:

(i) A program under § 273.22; or

(ii) A comparable program established by a State or political subdivision of a State.

(b) *General Rule.* Individuals are not eligible to participate in the Food Stamp Program as a member of any household if the individual received food stamps for more than three countable months during any three-year period, except that individuals may be eligible for up to three additional countable months in accordance with paragraph (e) of this section.

(1) *Countable months.* Countable months are months during which an individual receives food stamps for the full benefit month while not either:

(i) Exempt under paragraph (c) of this section;

(ii) Covered by a waiver under paragraph (f) of this section; or

(iii) Fulfilling the work requirement as defined in paragraph (a)(1) of this section.

(2) *Good cause.* As determined by the State agency, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work is temporary and the individual retains his or her job.

(3) *Measuring the three-year period.* The three-year period may be measured and tracked as the State agency deems appropriate; except that, with respect to a State, the three-year period:

(i) Shall be measured and tracked consistently so that individuals who are similarly situated be treated the same; and

(ii) Shall not include any period before the earlier of November 22, 1996, or the date the State notified food stamp recipients of the application of Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

(4) *Treatment of income and resources.* The income and resources of an individual made ineligible under this paragraph shall be handled in accordance with § 273.11(c)(2).

(5) *Benefits received erroneously.* If an individual subject to this section receives food stamp benefits erroneously, the State agency may opt to consider the benefits to have been received unless or until they are repaid in full.

(6) *Verification.* Verification shall be in accordance with (273.2(f)(1) and (f)(8).

(7) *Reporting.* A change in work hours below 20 hours per week, averaged monthly, is a reportable change in accordance with § 273.12(a)(1)(vii). Work performed in a job that was not reported according to the requirements of § 273.12 shall be considered ''work'' for purposes of this provision.

(8) *Applicability of Food Stamp Act.* Nothing in this paragraph shall make an individual eligible for food stamp benefits if the individual is not otherwise eligible for benefits under the other provisions of these regulations and the Food Stamp Act of 1977, as amended.

(c) *Exemptions.* An individual is exempt from the time limit if he or she is

(1) Under 18 or older than 50 years of age;

(2) Determined by the State agency to be medically certified as physically or mentally unfit for employment. An individual is medically certified as physically or mentally unfit for employment if he or she:

(i) Is receiving temporary or permanent disability benefits issued by governmental or private sources; or

(ii) Provides a statement from a physician or a licensed or certified psychologist that he or she is physically or mentally unfit for employment.

(3) Is a parent (natural, adoptive, or step) of a household member under age 18;

(4) Is residing in a household where a household member is under age 18;

(5) Is otherwise exempt from work requirements under section 6(d)(2) of the Food Stamp Act, as implemented in regulations at § 273.7(b); or

(6) Is pregnant.

(d) *Regaining eligibility.*

(1) An individual denied eligibility under paragraph (b) of this section shall regain eligibility to participate in the Food Stamp Program if, as determined by the State agency, during any 30 consecutive days, he or she:

(i) Worked 80 or more hours;

(ii) Participated in and complied with the requirements of a work program for 80 or more hours;

(iii) Worked and participated in a work program for a total of 80 hours; or

(iv) Participated in and complied with a workfare program.

(2) An individual regaining eligibility under paragraph (d)(1) of this section shall have benefits calculated as follows:

(i) For individuals regaining eligibility by working, participating in a work program, or combining hours worked and hours participating in a work program, the State agency may either prorate benefits from the day the 80 hours are completed or from the date of application.

(ii) For individuals regaining eligibility by participating in a workfare program, and the workfare obligation is based on an estimated monthly allotment prorated back to the date of application, then the allotment issued must be prorated back to this date.

(e) *Additional three-month eligibility.* An individual who regained eligibility under paragraph (d) of this section and who is no longer fulfilling the work requirement as defined in paragraph (a) of this section is eligible for a period of three consecutive countable months (as defined in paragraph (b) of this section), starting on the date the individual first notifies the State agency that he or she is no longer fulfilling the work requirement, unless the individual has been satisfying the work requirement by participating in a work or workfare program, in which case the period starts on the date the State agency notifies the individual that he or she is no longer meeting the work requirement. An individual shall not receive benefits under this paragraph (e) more than once in any three-year period.

(f) *Waivers.* (1) *General.* On the request of a State agency, the FNS may waive the time limit for a group of individuals in the State if FNS determines that the area in which the individuals reside:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Required data.* In developing unemployment rates or labor force data to support waiver requests, States shall use standard Bureau of Labor Statistics (BLS) data or methods.

(3) *Effective date of certain waivers.* In areas for which the State certifies that data from BLS show an unemployment rate above 10 percent, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(4) *Duration of waiver.* In general, waivers will not be approved for more than one year, and the duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State must show that the basis for the waiver is not a seasonal or short term aberration.

(5) *Areas covered by waivers.* States may define areas to be covered by waivers, but the data and analysis used to support the waiver must correspond to the defined area.

Dated: November 30, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 99–32527 Filed 12–16–99; 8:45 am]

BILLING CODE 3410–30–P