

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, and 285**

[FNS 2011–0008]

RIN 0584–AD87

**Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule and interim final rule.

**SUMMARY:** This final rule implements provisions of the Food, Conservation and Energy Act of 2008 (FCEA) affecting the eligibility, benefits, certification, and employment and training (E&T) requirements for applicant or participant households in the Supplemental Nutrition Assistance Program (SNAP). The rule amends the SNAP regulations to: Exclude military combat pay from the income of SNAP households; raise the minimum standard deduction and the minimum benefit for small households; eliminate the cap on the deduction for dependent care expenses; index resource limits to inflation; exclude retirement and education accounts from countable resources; clarify reporting requirements under simplified reporting; permit States to provide transitional benefits to households leaving State-funded cash assistance programs; allow States to establish telephonic and gestured signature systems; permit States to use E&T funds to provide job retention services; and update requirements regarding the E&T funding cycle. These provisions are intended to more

accurately reflect needs, reduce barriers to participation, and improve efficiency in the administration of the program. This rule also replaces outdated language in SNAP certification regulations with the new program name and updates procedures for accessing SNAP benefits in drug and alcohol treatment centers and group living arrangements with use of electronic benefit transfer (EBT) cards. This rule provides States with regulatory options for conducting telephone interviews in lieu of face-to-face interviews and for averaging student work hours.

Finally, the Department is issuing an interim final rule (with a request for additional comment) that will require that drug and alcohol treatment and group living arrangements (GLA) centers to: Submit completed change report forms to the State agency when a resident leaves the center; notify the State agency within 5 days when the center is not able to provide the resident with their EBT card at departure; and return EBT cards to residents with prorated benefits based up on the date of their departure.

**DATES: Effective dates:** This final rule is effective March 7, 2017. The amendments to 7 CFR 273.11(e) and 273.11(f) are being issued as an interim final rule and are effective April 6, 2017. The amendments to 7 CFR 273.2(c)(1)(v) are effective January 8, 2018.

**Comment date:** FNS will consider comments from the public on the amendments to 7 CFR 273.11(e) and 273.11(f). Comments must be received at one of the addresses provided below on or before March 7, 2017.

**ADDRESSES:** FNS invites interested persons to submit comments on the interim rule provisions at 7 CFR 273.11(e) and 273.11(f). Comments may be submitted by one of the following methods:

- **Federal e-Rulemaking Portal:** Go to <http://www.regulations.gov>. Preferred method; follow the online instructions for submitting comments on docket FNS 2011–0008.

- **Fax:** Submit comments by facsimile transmission to: Sasha Gersten-Paal, Certification Policy Branch, Fax number 703–305–2486.

- **Mail:** Comments should be addressed to Sasha Gersten-Paal, Certification Policy Branch, 3101 Park Center Drive, Alexandria, VA 22302.

- **Hand Delivery or Courier:** Deliver comments to Sasha Gersten-Paal, Certification Policy Branch, 3101 Park Center Drive, Alexandria, VA 22302, Monday–Friday, 8:30 a.m.–5:00 p.m.

All comments submitted in response to the interim rule provision will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service (FNS), 3101 Park Center Drive, Room 810, Alexandria, Virginia 22302, (703) 305–2507, [sasha.gersten-paal@fns.usda.gov](mailto:sasha.gersten-paal@fns.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*What acronyms or abbreviations are used in this discussion?*

In the discussion of this final rule, we use the following acronyms or other abbreviations to stand in for certain words or phrases:

Phrase	Acronym, abbreviation, or symbol
Code of Federal Regulations	CFR.
Electronic Benefit Transfer Card	EBT Card.
Federal Register	FR.
Federal Fiscal Year	FY.
Food and Nutrition Act of 2008	Act.
Food and Nutrition Service	FNS.
Food, Conservation and Energy Act of 2008 (Pub. L. 110–246)	FCEA.
Food, Security and Rural Investment Act of 2002 (Pub. L. 107–171)	FSRIA.
Office of Management and Budget	OMB.
Secretary of the U.S. Department of Agriculture	Secretary.
Section (when referring to Federal regulations)	§ or §§.
State Funded Cash Assistance Program	SFCA Program.
Supplemental Nutrition Assistance Program	SNAP.
Temporary Assistance for Needy Families	TANF.
United States Code	U.S.C.
U.S. Department of Agriculture	the Department or USDA.

*What changes in the law triggered the need for this final rule?*

The Food, Conservation and Energy Act of 2008 (Pub. L. 110-246) (FCEA), enacted on June 18, 2008, amended and renamed the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.*, as the Food and Nutrition Act of 2008 (the Act). This final rule implements FCEA provisions affecting the eligibility, benefits, and certification of program participants, as well as E&T requirements of the program. This rule also codifies into the SNAP regulations the FCEA's nomenclature changes from "Food Stamp Program" to "Supplemental Nutrition Assistance Program" (SNAP) throughout Part 273 of the SNAP regulations.

*What were the FCEA mandatory provisions and when did States have to implement them?*

The statutory provisions covered in this rule were effective on October 1, 2008. Many of the eligibility, certification and E&T provisions included in this final rule were mandated by the FCEA to be implemented by State agencies on October 1, 2008. These provisions, addressed in an implementing memo issued on July 3, 2008, describing both mandatory and optional provisions, with corresponding FCEA sections include:

- Section 4001—Changing the program name;
- Section 4101—Excluding military combat pay;
- Section 4102—Raising the standard deduction for small households;
- Section 4103—Eliminating the dependent care deduction caps;
- Section 4104(a)—Indexing the resource limits;
- Section 4104(b)—Excluding retirement accounts from resources;
- Section 4104(c)—Excluding education accounts from resources;
- Section 4107—Increasing the minimum benefit for small households; and
- Section 4122—Funding cycles for E&T programs.

*What were the optional provisions in the FCEA?*

The FCEA also created new program options that State agencies may include in their administration of the program,

which State agencies were permitted to implement on October 1, 2008. These provisions, which are addressed in this rule, with corresponding FCEA sections include:

- Section 4105—Expanding simplified reporting;
- Section 4106—Expanding transitional benefits option;
- Section 4108—E&T funding of job retention services; and
- Section 4119—Telephonic signature systems.

FNS informed State agencies of implementation timeframes for all SNAP provisions in the July 3, 2008, FCEA memorandum. The memo is available on the FNS Web site at [http://www.fns.usda.gov/sites/default/files/070308\\_0.pdf](http://www.fns.usda.gov/sites/default/files/070308_0.pdf).

*When did the Department publish the proposed rule and how did commenters respond?*

On May 4, 2011, the Department published a proposed rule (76 FR 25414) that would codify certain provisions of the FCEA as well as two discretionary provisions into SNAP's certification, eligibility, and E&T rules. The 60-day comment period ended on July 5, 2011. A total of 118 commenters submitted comments. These commenters included the following: 59 advocacy groups, 18 food banks, 15 individuals, 13 non-profit organizations, seven associations and six State agencies. The Department greatly appreciates the comments received on the proposed rule as they have been essential in developing the final rule. The Department received generally favorable feedback from the public on the proposed rule. Where commenters expressed concerns or questions, the Department has considered these issues, and where appropriate, incorporated these comments into the regulatory text.

In this final rule, the Department discusses each statutory and discretionary provision in the proposed rule and the comments made, with some general exceptions. Although the Department considered all comments, the preamble discussion focuses primarily on the most frequent comments and/or those that influenced revisions to the proposed rule, and modifications made to the proposed rule in response to public input. Comments supporting proposed provisions are

generally not discussed in detail. The Department also does not discuss comments that only address technical corrections or inadvertent omissions in detail; however, the appropriate corrections are made. For provisions on which no comments were received, the Department is adopting those provisions as proposed. Other comments added value and clarity to the regulations and we incorporate those suggested revisions into the relevant regulatory provisions.

The Department also received comments on several provisions that were outside the scope of the proposed rulemaking. By outside the scope, the Department means that commenters provided substantive feedback on provisions that were not proposed for revisions as part of this rulemaking. Most of the comments that are outside the scope of the proposed rulemaking will generally be identified but not fully discussed in this final rule. Nevertheless, the Department appreciates the feedback on those issues and will consider incorporating some of those perspectives and suggestions in future guidance, rulemaking and/or policy discussions.

To view all public comments on the proposed rule go to [www.regulations.gov](http://www.regulations.gov) and search for public submissions under docket number FNS-2011-0008.

Discussion of Specific Provisions and Comments

1. Program name change and Other Conforming Nomenclature Changes, Part 273

*What changes are made to the program's name by this final rule?*

This rule incorporates the nomenclature revisions proposed in the May 4, 2011 proposed rule. These changes are based on Section 4001 of the FCEA, which changed the name of the program as well as the name of the statute that governs the program. The Department is updating nomenclature in sections where substantial changes are being made or the necessary changes have already been identified. This is a long-term and incremental process. The nomenclature changes made in this final rule throughout part 273 include the following:

Previous name	New name
Food Stamp Program .....	Supplemental Nutrition Assistance Program (SNAP).
Food Stamp Act of 1977 .....	Food and Nutrition Act of 2008.
food stamp .....	SNAP.
food coupons .....	SNAP benefits.

Previous name	New name
food stamps .....	SNAP benefits.

In addition, this rule incorporates a change at 7 CFR 273.25 to update references to SFSP (Simplified Food Stamp Program) to S-SNAP wherever it occurs and FSP to SNAP.

*Do State agencies have to use the new program name, SNAP?*

No. Although the official name of the program changed on October 1, 2008, State agencies may continue to use State-specific names for SNAP. One commenter (State agency) asked whether States may exhaust existing inventory of materials prior to transitioning to a new program name. It has been a longstanding policy of the Department to allow States to use State-specific names. Therefore, it is also a State agency’s discretion to deplete materials using the old name prior to changing to a new program name, whether it is SNAP or some other State-specific name. As mentioned in the preamble to the May 4, 2011 proposed rule, FNS continues to request that State agencies discontinue the use of the name, “Food Stamp Program”. In addition, FNS recommends that States that have yet to move to a name other than “Food Stamp Program” should consider adopting the official name, Supplemental Nutrition Assistance Program, or SNAP. Several commenters opposed the use of any other name than SNAP, and another commenter stressed the importance of having a national name for a national program. While we understand the reasoning behind this comment, because the Department has permitted States to use State-specific names for many years, it would be inappropriate and costly to require States to transition to the official Federal program name at this time. However, in recognition of commenters’ support of the use of the updated program name exclusively, and in order to support consistency across the program, the Department is updating the final rule to include most of the above-mentioned nomenclature changes throughout Parts 271 through 285, not just in Part 273 as in the proposed rule. These sections include all Department SNAP and Food Distribution program regulations.

The proposed rule changed “food stamps” and “food coupons” to “benefits.” On further review after publication of the proposed rule, the Department determined that the reference to “benefits” is not specific

enough in many instances throughout Parts 271 through 285. In this final rule, the Department will change references to “food stamps” to “SNAP benefits” through Parts 271 through 285 and “food coupons” to “SNAP benefits” through Part 273.

2. What changes were proposed to provisions on drug addiction and alcoholic (DAA) treatment centers and in group living arrangements (GLAs) in the proposed rule?

The Department proposed revising § 273.11(e) and § 273.11(f) to remove references to food coupons and to update the procedures for providing benefits via EBT cards to residents of DAA centers, and residents of GLAs. The purpose of this proposed provision was to update nomenclature to reflect the electronic issuance of benefits through EBT. Since these procedures are already in use by these types of centers, only the regulatory description of the procedures was proposed to be updated. The proposed regulation would have required that the center advise the State agency of the center’s inability to refund the departing resident’s benefits, but did not provide a time frame for this requirement.

*What comments were received on the proposed revisions?*

The Department received 11 comments that addressed client rights as related to residents of these DAA centers and GLAs. In particular, commenters believed that both DAA treatment centers and GLAs should be required to return a pro-rata share of benefits to residents who leave in the middle of the month, return EBT cards to departing residents, and report when residents leave the center. Commenters also said that these centers should not be allowed to act as an authorized representative for the SNAP recipient. Prior to EBT, such centers were required to redeem residents’ paper coupons through authorized food stores. Under EBT, both DAA treatment centers and GLAs centers are allowed to be authorized as retailers in order to redeem benefits directly through a financial institution. Both DAA treatment centers and GLAs then use the cash to purchase food for their residents.

One commenter suggested that the Department strengthen the procedures used when residents leave these centers and enhance protections for these

vulnerable SNAP participants. The comment included the following specific recommendations: (1) Require both DAA centers and GLAs to submit a completed change report form to the State when the residents depart; (2) require centers to provide EBT cards to departing residents; (3) and require that the EBT cards returned to the departing residents include pro-rated benefits. The commenter pointed out that the current and proposed regulations raise concerns because residents of both DAA treatment centers and GLAs may not be receiving the full amount of benefits they are entitled to when they leave the center. The commenter pointed out that prorating by day is a basic rule in SNAP and recommended pro-rating by day for substance use disorder treatment centers whose residents have departed. FNS believes that these concerns and recommendations are important to ensure that residents of DAA treatment centers and GLAs do not lose SNAP benefits when they leave.

*What is required by current regulations regarding GLAs and DAA treatment centers when a resident receiving SNAP benefits leaves the center?*

Current regulations require the State to ensure that its procedures prohibit DAA treatment centers from obtaining more than one-half of the household’s (typically a single individual) allotment prior to the 16th of the month unless the center permits the return of the benefits to the household’s EBT account through a refund, transfer, or other means. The EBT procedures for residents in GLAs vary depending on whether all the residents are certified together as one household or are certified individually.

The current regulations require that the DAA treatment center must provide the household with its EBT card if the center has possession of card when a resident leaves. In the case where the household has already left and the treatment center is unable to return the benefits, the center must promptly inform the State agency and the State agency must provide the household with the EBT card.

The current regulations provide that the day of the month that the resident leaves the treatment center determines how the resident will receive their unspent benefits once they leave the center. Generally, if the household leaves prior to the 16th of the month, the State must ensure that its

procedures prohibit the DAA treatment center from obtaining more than one-half of the household's allotment and return of one-half of the allotment to the household's EBT account through a refund, transfer, or other means if the household leaves prior to the 16th of the month. If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the DAA treatment center to give the household a portion of its allotment, but this is not required. If no benefits have been spent on behalf of the individual household, the center must return the full value, including any benefits already debited from the household's current monthly allotment but not yet spent. In situations where benefits have already been debited from the EBT account and any portion spent on behalf of household, the DAA treatment center has several options to ensure clients receive the balance of their benefits for that month.

*Are the rights of clients residing in DAA treatment centers and in GLAs also changed by the final rule?*

Yes. Even though the Department did not propose any changes to the rights of clients at these centers, the comments received on this topic convinced the Department of the need for changes to these provisions to better protect these vulnerable participants. Consequently, the Department has decided to issue several changes to provisions in § 273.11(e) and § 273.11(f) as an interim final rule to ensure that this vulnerable population receives the benefits they are entitled to as soon as possible. The Department has determined that these changes to the current rules are necessary to ensure that this vulnerable population begins receiving all the benefits to which they are entitled as soon as possible. Therefore, the Department has determined pursuant to 5 U.S.C. 553(b)(B) that there is good cause to forego the notice of proposed rulemaking procedure since, in this instance, it is contrary to the public interest. The Department will accept and consider comments on these provisions prior to issuing a final rule. The Department will accept and consider comments on these provisions prior to issuing a final rule.

Most significantly, the rule requires that both DAA treatment centers and GLAs (referred to below as "centers") must now return a prorated amount of the household's monthly allotment back to the EBT account based on the number of days in the month that the household resided at the center regardless of whether the household leaves before, on, or after the 16th day. No matter the

method used by the center to redeem a household's benefits, the household, not the center, will now have sole access to the prorated benefits in the EBT account if the household leaves the center. States' automated systems and EBT make the precise, day-by-day, prorating of benefits easy.

In addition, the interim final rule requires that centers notify the State agency of the household's change in address, and new address if available, and that the center is no longer the household's authorized representative. The center must provide the household with a change report form as soon as it has knowledge the household plans to leave the facility and advise the household to report to the State agency any changes that the household is required to report within 10 days of the change. After the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

If the household has already left the center, and as a result, the center is unable to refund the benefits to the household, the center is required to notify the State agency within five days of the of the household's departure that the center was unsuccessful in its effort to refund the prorated share. Once notified, the State agency must effect the refund from the center's bank account to the household's EBT account within a reasonable period of time. These procedures are applicable at any time during the month. Five days is a reasonable and necessary amount of time given that the household will have no access to these funds during the time and may be unable to purchase food.

The center is also required to provide the household with its EBT card within 5 days of the household's departure and to return any EBT card not provided to departing residents to the State agency within 5 days.

If the center completed any part of its monthly shopping by the time a household departs, the food purchased on behalf of the departed resident will remain in the center and will be used to feed other residents.

The Department will also consider changing the terminology used in SNAP rules from DAA treatment centers to the more medically correct "Substance Use Disorder" treatment centers. Any such action would be made in future rulemaking, and not for purposes of this interim final rule, to ensure the terminology is changed throughout the SNAP regulations.

Finally, the Department revises outdated references to § 273.1(e)(2) in this final rule. Section 273.1(e)(2)

previously discussed the allowability of certain residents of public institutions to apply for SNAP benefits jointly with their SSI application. This language is now contained at 273.11(i). The Department replaces the references to § 273.1(e)(2) with § 273.11(i) in the two sections of the regulations where the old reference is contained, at §§ 273.2 and 273.10.

### 3. Military Combat-Related Pay Exclusion § 273.9(c)(20)

*What changes did the FCEA make regarding the exclusion of military combat-related pay from income in SNAP eligibility determinations?*

Section 4101 of FCEA added Section 5(d)(19) of the Act (7 U.S.C. 2014(d)(19)) to exclude special pay to United States Armed Forces members that is received in addition to basic pay as a result of a member's deployment or service in a designated combat zone. The exclusion includes any special pay received pursuant to Chapter 5 of Title 37 of the United States Code and any other payment that is authorized by the Secretary as appropriate to be excluded under Section 5(d)(19) of the Act. To qualify for the exclusion, the pay must be received as a result of deployment to or service in a combat zone and must not have been received immediately prior to the service or deployment in the combat zone.

*How did FNS propose to implement this exclusion in the SNAP regulations?*

FNS proposed to add a new paragraph (20) to § 273.9(c) to exclude special combat-related pay received by a household from a person who is serving in the U.S. Armed Forces and is deployed to or serving in a Federally-designated combat zone. This special pay must be received in addition to basic pay and must not be received immediately prior to the service or deployment in the combat zone.

*What types of pay must be excluded from the eligibility determination under this requirement?*

A total of 59 commenters provided feedback on this provision. Forty-nine of those commenters requested guidance to assist State and local agencies identify what constitutes the special pay that is to be excluded from household income. Eleven commenters further requested that the Department explicitly identify what pay is excluded from the service member's leave and earnings statements (LES), for example, hostile fire pay and hazardous duty incentive pay. They requested that the Department expand specific guidance

issued in 2005 on the exclusion of military combat pay and provide a link to the Department of Defense (DoD) Defense Finance and Accounting Service (DFAS) Web site at <http://www.dfas.mil/dfas/militarymembers.html>. That being said, nine of those 11 commenters also acknowledged that listing this link in the regulation could require more frequent regulation updates, and that guidance may be more helpful. One commenter requested that the Department periodically update guidance to reflect changes in designated combat zones. Eleven commenters recommended that the Department clarify that only money made available to the household should be counted as income, and one commenter recommended specific procedures for calculating the amount of money that is available to household members when the service member keeps some of the special pay.

In considering these comments, FNS consulted with staff at DoD's DFAS. DFAS explained that there are complexities with combat pay; for example, combat zones change and some people may receive special pay when they are not deployed to a combat zone. DFAS recommended issuing guidance, which the Department intends to do shortly after publication of this rule. A combat zone is any area that the President of the United States designates by Executive Order as an area in which the U.S. Armed Forces are engaging or have engaged in combat. DFAS recommended that eligibility workers review a service member's LES to determine what additional pay categories he or she received as a result of the deployment to the combat zone. In most cases, the amount to be excluded should be identifiable by comparing the LES reflecting pay immediately prior to deployment to the LES after deployment. When questions arise as to specific issues or payment codes, DFAS recommended that State agency staff contact the service members' supporting finance office.

The Department is not the Federal agency charged with determining combat zone designations. DoD, and in particular DFAS, has the expertise on specific types of pay a service member receives during a deployment to a combat zone and an understanding of the various issues that can arise in combat-related pay issues. The language in the proposed rule reflects the broader language of Section 5(d)(19) of the Act in that the pay is limited to those special pays listed at Chapter 5 of Title 37 of the United States Code. In addition, the pay must be received in

addition to basic pay, received as a result of deployment, and not received before the deployment or service in a combat zone. The Department also wishes to reiterate that only income made available to the household is considered for the purposes of determining a household's eligibility and benefit level. The Department believes that these criteria are sufficiently clear for State agencies to make a determination on the appropriate income exclusion. For these reasons, the Department adopts the proposed provision at § 273.9(c)(20) without change as final and is committed to providing additional guidance shortly after publication of this rulemaking.

#### 4. Standard Deduction Increase § 273.9(d)(1)(iii)

##### *How did the law change the SNAP standard deduction?*

Section 4102 of the FCEA amended Section 5(e) of the Act (7 U.S.C. 2014(e)) to raise the minimum standard deduction from \$134 to \$144, effective in FY 2009 for the 48 contiguous States and the District of Columbia. In addition, it changed the minimum standard deduction amounts for Alaska, Hawaii, the U.S. Virgin Islands and Guam to \$246, \$203, \$127 and \$289, respectively. Beginning in FY 2010 and each fiscal year thereafter, FCEA mandated that the minimum standard deduction must be indexed to inflation. FNS calculates this amount and releases it annually to State agencies.

##### *How did the Department propose to incorporate this change in the regulations?*

The Department proposed amending the regulations at § 273.9(d)(1)(iii) to incorporate the FCEA changes to the minimum standard deduction. In addition, the Department proposed a technical revision to correct the citation at § 273.12(e)(1)(B) from § 273.9(d)(7) to § 273.9(d)(1).

##### *Will the Department adopt the provision as proposed?*

Yes. Sixty-two commenters indicated their general approval of the proposals regarding the standard deduction. No commenters shared concerns with the proposal.

##### *Does the Department intend to provide any additional guidance on the standard deduction provision?*

Not at this time. While only eight commenters requested guidance on the standard deduction, 59 commenters noted a problem with timely updating of standard deduction increases for

households participating under demonstration projects. These commenters requested that the Department ensure that States with combined application projects (CAPs) and other demonstration projects make annual updates to the standard deduction on a timely basis. States are already required to comply with the terms and conditions of demonstration projects such as CAPs and make annual updates according to existing SNAP policy.

#### 5. Eliminating the Cap on Dependent Care Expenses § 273.9(d)(4)

##### *What changes did the law make to the dependent care deduction?*

Section 4103 of the FCEA amended section 5(e)(3) of the Act (7 U.S.C. 2014(e)(3)) to eliminate the caps on the deduction for dependent care expenses, thereby allowing eligible households to deduct the full amount of their dependent care costs. The change was effective October 1, 2008. The law required State agencies to implement the provision for new households applying for benefits as of that date. For ongoing households already on the program, the Department encouraged State agencies to implement the change in the deduction amount as soon as possible on or after October 1, 2008, on a case-by-case basis, at the first opportunity to enter the household's case file. Prior to this change in the law, the caps on the dependent care deduction had not been adjusted for many years, and the caps no longer reflected the actual dependent care costs that low-income households pay. Eliminating the caps enables households to deduct the full costs of dependent care that are allowable and not already reimbursed by another program, and results in a benefit increase for some families with high dependent care costs.

##### *How did the Department propose to revise the deduction for dependent care costs?*

The Department proposed to amend §§ 273.9(d)(4) and 273.10(e)(1)(i)(E) to eliminate the caps on dependent care. In addition, the Department proposed to clarify that expenses for transporting dependents to and from care, and separate activity fees charged by the care provider that are required for the care arrangement, are also deductible as part of the actual costs of care.

The Department also proposed to incorporate into § 273.9(d)(4) longstanding guidance that limits dependent care to include care for children through the age of 15 as well

as incapacitated persons of any age that are in need of dependent care. The Department invited comments on whether the definition of “elderly or disabled” in 7 CFR 271.2 should be used to define an incapacitated person. Finally, the Department proposed to restore language that permits households to deduct dependent care costs if a household member needs care for a dependent in order to seek employment. A 1989 technical amendment to the regulations had removed the previously codified provision.

*What dependent care issues did commenters focus on?*

Overall, commenters supported the Department’s proposal to remove the dependent care caps from the SNAP regulations. Commenters from the advocacy community strongly supported the proposals to include transportation costs and activity fees as part of dependent care expenses, but these commenters opposed the proposed limits based on age or incapacitation.

*What concerns did commenters express about transportation-related dependent care costs?*

Most of the 81 commenters that addressed dependent care changes enthusiastically supported the proposal to allow households to deduct transportation costs to and from dependent care facilities. Only one commenter opposed the proposal. However, some commenters, including several State agencies, expressed concern about the error-prone nature of determining transportation costs specifically related to dependent care and provided several suggestions to help reduce potential errors. Their suggestions included making transportation costs optional, permitting the use of standard transportation allowances (either developed by the Department or by individual States), and allowing States additional time to implement this provision since it will be new policy for some States. Concerning the potential that transportation costs associated with dependent care may be more error-prone, the Department notes that a number of State agencies have been allowing households to deduct dependent care related transportation costs for years and this has not been identified as a major source of quality control errors.

*What is Federal policy on verifying child care costs?*

Current regulations do not require verification of dependent care costs unless the amount being claimed is considered questionable, per § 273.2(f)(2). However, SNAP regulations at § 273.2(f)(3) also permit State agencies to verify on a project level basis or a statewide basis certain eligibility factors that are not otherwise required to be verified under Federal regulations.

*Should State agencies require verification of transportation-related dependent care costs?*

A number of commenters, representing both State agencies and advocates, argued that States should not have to verify transportation costs unless questionable. In particular, commenters noted the difficulty of verifying transportation costs related to dependent care. Many commenters from the advocacy community urged the Department to restrict States’ use of the optional verification provision at § 273.2(f)(3) for transportation-related dependent care costs. While the Department understands the concern of these commenters, the Department declines the request to impose such a restriction. That is, State agencies have the option to verify transportation costs if questionable. This option allows States to be responsive to current information, such as QC data, which may indicate a need for verification of certain information, whether it be statewide or just in certain project areas. The provisions of § 273.2(f)(2) require that questionable items be verified on a case-by-case basis, but States must establish guidelines for determining what is questionable.

*What are activity fees?*

As discussed in the preamble to the proposed rule, an activity fee is an expense associated with a structured care program. The activity should both be necessary for the dependent to experience the typical daily activities offered in the care and enable a household member to be employed, seek employment, or pursue training or education to prepare for employment. We define activity fees in the final regulatory text as an activity or other fee associated with the care provided to the dependent that are necessary for the household to participate in the care. An activity fee does not have to be mandatory to be deductible under this provision, but it does need to be specific and identifiable as with all deductible dependent care costs. Examples of

activity fees that may be deductible as dependent care costs include the cost of an art class for an after-school program or an adult day care program, additional equipment fees charged for attending a sports camp, or the cost of field trips sponsored by summer camps. Activity fees that are necessary for the dependent to experience the typical daily activities offered in care should be allowed.

*What feedback did commenters provide on activity fees?*

In the proposed rule, the Department requested that commenters provide feedback on the proposal to allow households to deduct separately identifiable activity fees that are necessary for the household to participate in or maintain care. The Department stressed its interest in receiving commenter input on activity fees since State agencies will be responsible for determining whether specific costs qualify as allowable activity fees. In particular, we asked commenters to address whether activity fees are identifiable additional charges paid by households that can be verified, if more detailed guidance was needed to determine allowable costs, and what specific conditions commenters would wish to see in a final rule.

Commenters generally approved of the proposal to allow activity fees. Some commenters addressed the preamble request for feedback on whether activity fees are easily identified and verified and whether more information or guidance is needed on activity fees. Generally, commenters requested clarification on activity fees without giving particular feedback. Eight commenters, mostly advocates, responded that FNS needs to clarify what is meant by activity fees; one State agency disagreed. Other commenters requested guidance on specific issues, such as whether activity fees for a home day care are allowable deductions and when an activity fee is required. One commenter writing on behalf of a group of eligibility workers indicated that identifying and verifying activity fees is dependent on State or local dependent care licensing requirements, and that unregulated or informal dependent care facilities are unlikely to have documented costs such as activity fees. The Department did not make any substantive changes due to the overall general nature of the comments. One technical correction was made. In the final regulatory text, the Department includes an activity or other fee associated with dependent care as an allowable dependent care cost.

*What particular other costs may be deducted in caring for a dependent under the final rule?*

Commenters, mostly from the advocacy community, requested clarification on other allowable costs related to dependent care, such as subsidy copays (70), payments made to individuals, related or unrelated, residing with the household but not receiving SNAP benefits (62), payments for the care of non-household members such as a relative that the household is responsible for (3), and payments made for reasonable fees including late fees (14). One commenter suggested there be a standard deduction for the costs.

Such dependent care costs are allowable if they are necessary for a household member to search for employment, or to accept or continue employment, training, or education in preparation for a job (see Section 5(e)(3) of the Act). For example, although the Department will not address other specific additional allowable costs in the regulatory language beyond transportation and activity fees, subsidy co-pays and late fees or application fees would meet the statutory definition at section 5(e)(3) of the Act. However, whether other dependent care costs mentioned by commenters involving household members or non-household members are allowed requires a closer examination of the specific situations to determine whether the costs would meet the statutory definition. If State agencies have questions about specific or complex situations, we recommend that they work with their FNS Regional Office to determine whether these costs qualify for the dependent care deduction.

Commenters also suggested that in order to address a persistent source of confusion, the final rule should specify that care is deductible even if provided by a relative as long as that person is not receiving SNAP benefits as part of the same household as the dependent receiving care. The Department agrees with this suggestion and has included it in the final rule.

*Are dependent care costs incurred due to job search deductible?*

Sixty-nine commenters requested that the final rule explicitly allow a deduction for dependent care costs incurred by households with individuals looking for work. The preamble to the proposed rule stated that the Department intended to reinsert language about the deductibility of dependent care costs incurred by job seekers into § 273.9(d)(4), which had been inadvertently dropped in a

rulemaking in 1989. However, despite this stated intention, the proposed regulatory language at § 273.9(d)(4) did not actually include this language. We appreciate this observation from commenters and, to address this oversight, the Department is revising the proposed provision at § 273.9(d)(4) to allow household members who are seeking work to deduct dependent care costs.

*How did commenters react to the age and incapacitation criteria for allowable dependent care costs?*

Most commenters who addressed the provision (66) opposed both criteria and did not want to use the regulatory definition of “elderly or disabled member” to define “incapacitation”; one State agency disagreed. In particular, commenters from the advocacy community opposed any restrictions on the dependent care deduction as long as the household is able to provide documentation if questioned by the State agency. We received conflicting comments as to the age restriction, with suggestions that the age be limited to children until their sixteenth birthday and that the deduction be permitted to children through their eighteenth birthday.

One commenter noted that households with older teens (16 years of age and older) may have legitimate dependent care needs not related to incapacitation, such as enrollment in outside-school care for safety, truancy, foster care or court-ordered supervision requirements. The commenter pointed out that 16-year-olds are required to register for work unless in school half-time or otherwise exempt from registering, but being required to register for work does not necessarily mean a 16 or 17 year old does not need supervision. The comment went on to argue that adolescents may need to be enrolled in after-school or summer programs due to an incapacity or disability. Parents may not have a government-funded option, or may have to private pay a fee for older children to participate in adult supervised activities.

Commenters also questioned what the Department meant by “incapacitation”, which was not defined in the proposed rule.

*What does the final rule require relative to limiting dependent care costs based on age or incapacitation?*

While the limit on the use of the dependent care deduction with regard to age reflects longstanding guidance from 1987, the Department agrees that there are circumstances where a child

16 or older may still be in need of supervision and has revised this restriction in the final rule to include all children under the age of 18.

The other proposed criterion, incapacitation, accounts for persons who have some physical or mental limitation that requires them to receive dependent care. This also reflects longstanding guidance, although it does not appear to have been widely disseminated. The regulatory definition of disabled is stringent and the proposed definition would not necessarily capture the breadth of situations. The Department wishes to clarify that, for the purpose of this provision only, incapacitation refers to any permanent or temporary condition that prevents an individual from participating fully in normal activities, including but not limited to work or school, without supervision and that requires the care of another person to ensure the health and safety of the individual, or a condition or situation that makes a lack of supervision risky to the health and safety of that individual. By extending dependent care to those who are incapacitated, the dependent care needs of any SNAP household member expected to comply with work requirements, or who is working, in training or education programs, or seeking work, would be allowable as a deduction. The Department believes that this clarification provides both a reasonable consideration of the dependent care expenses of older youth and adults and a measure of protection to the program from abuse.

Allowable medical expenses may be deducted under the excess medical deduction or the dependent care deduction but not both provisions. Prior to the removal of the dependent care caps by Section 4103 of the FCEA, adult dependent care needs were still an allowable deduction under 273.9(d) as medical expenses. Individuals who meet the specific legal definition of “elderly or disabled persons” at § 271.2 have been able to deduct dependent care monthly costs over the \$35 threshold of the excess medical deduction as described in § 273.9(d)(3)(x). This provision allows for the costs of “maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness.” Allowing a household with an elderly or adult member with a disability to deduct the entire monthly dependent care costs under the dependent care deduction provision rather than the excess medical deduction provides these households with an additional \$35 per month in



dependent care deductions. The Department is revising the language at §§ 273.9(d)(3)(x) and 273.9(d)(4) to ensure that dependent care costs are not double counted under both the dependent care deduction provision and the excess medical deduction provision.

Accordingly, for the reasons noted above, the Department is revising the provision from the proposed language at § 273.9(d)(4) to instead specify that dependent care expenses incurred during a job search are deductible, provided the costs are not already paid by another source on behalf of the household, and to clarify that the costs of care provided by a relative may be deducted so long as the relative providing care is not part of the same household as the child or dependent adult receiving care. The Department is also revising proposed § 273.9(d)(4) and current § 273.9(d)(3)(x) to state that the same dependent care costs for a qualifying household member who is elderly or has a disability may be deducted under § 273.9(d)(4) or § 273.9(d)(3)(x) but not both.

#### 6. Asset Indexation § 273.8(b)

##### *How did the law change SNAP asset limits?*

Section 4104(a) of the FCEA amended Section 5(g) of the Act (7 U.S.C. 2014(g)) to mandate that current asset limits be indexed to inflation, rounding down to the nearest \$250, beginning October 1, 2008.

##### *How did the Department propose to implement this change in SNAP regulations?*

The Department proposed to amend § 273.8(b) to specify that the asset limits are indexed to inflation as of October 1, 2008, and adjusted on October 1 of each following year. As mandated by the Act, the maximum allowable financial resources shall be adjusted and rounded down to the nearest \$250 to reflect changes in the Consumer Price Index for the All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor for the 12-month period ending the preceding June. Each adjustment shall be based on the unrounded amount for the prior 12-month period.

##### *What comments did the Department receive on this proposal?*

Five commenters addressed this provision. Three commenters approved of the methodology in the proposed rule. One State agency argued that the provision would be difficult to administer as it only affects applicants, and suggested that the Department issue

guidance to explain how to handle asset increases for new and ongoing cases. One member of the public stated that the asset limit for a person with a disability should be raised to \$5,700.

As stated in the proposed rule, the provision will not adversely affect those currently participating. Participating households have already met a lower resource limit. For example, when the resource limit for the elderly or those with a disability increased to \$3,250, effective October 2012, no action was required for ongoing cases of elderly participants because they already met the existing \$3,000 limit. Changes to households' resources will be captured on recertification consistent with existing program requirements. The Department has considered the comments and has determined that additional guidance is not necessary to implement this provision successfully.

For the reasons noted above, FNS will adopt in this final rule the provision at § 273.8(b) as proposed, with one technical correction revising the reference to the inflation adjustment procedure at § 273.8(b)(1) for both households with a member who is elderly or has a disability and all other households.

#### 7. Exclusion of Retirement Accounts From Resources § 273.8(e)(2)

##### *How did the law change the handling of retirement accounts as a SNAP resource?*

Section 4104(b) amended Section 5(g)(7) of the Act (7 U.S.C. 2014(g)(7)) to exclude from resources any funds in a plan, contract, or account, described in sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18) of the Internal Revenue Code (IRC) of 1986 and the value of funds in a Federal Thrift Savings Plan account as provided for in 5 U.S.C. 8439.

##### *How did the Department propose to codify this provision in the SNAP regulations?*

The Department proposed to amend SNAP regulations at § 273.8(e)(2) to exclude funds from countable resources if they are in accounts that fall under any of the sections of the IRC as noted above.

##### *How did commenters react to the proposed provision?*

The Department received 85 comments generally approving the proposed provision; 81 commenters requested that the Department provide detailed guidance on identifying tax-exempted accounts. Nine of these commenters recommended that we

should work with the IRS to develop guidelines for identifying the tax-exempted accounts that are excludable. One commenter believes the Department's generic use of the term plans such as "408A plans" implies that other 408A accounts or contracts are not excluded. The commenter recommended the Department amend the regulations to consistently refer to all retirement accounts excluded under this provision. Two commenters recommended that the language be more open-ended, allowing for new programs to be added as Congress approves without the need to do a new rule. The Department believes that the proposed language regarding 408A accounts is clear and will adopt the provision as proposed.

Eleven commenters recommended increasing the \$1,500 limit on the value of funeral agreements specified in § 273.8(e)(2), arguing that the \$1,500 limit is outdated and unrealistic. Commenters also suggested that the Department adjust the limit for inflation by using the Consumer Price Index for all Urban Consumers. The Department agrees with the commenters that the value of funeral agreements is out of date. However, because the original intent of this limit was to conform SNAP to Aid to Families with Dependent Children policy, which no longer exists, continuing to have a limit is unnecessary. The final rule excludes the value of funeral arrangements from SNAP resources altogether.

While most commenters supported the retirement account provisions of the proposed rule, several urged the Department to issue guidance on how to identify the types of retirement accounts on the source documents that are excludable. One commenter acknowledged the chart the Department included in August 29, 2008 guidance as an important first step in helping identify the type of retirement accounts excluded under this provision (see <http://www.fns.usda.gov/snap/questions-and-answers-certification-issues-2008-farm-bill-2>). This commenter concluded that households would need to provide verification that a particular retirement account is excluded. The Department notes that Federal regulations do not require the verification of resources. Information on resources must be verified only if the State agency has opted to require verification (see §§ 273.2(f)(2) and 273.2(f)(3)).

The Department has considered these comments and believes the policy guidance on exclusion of retirement accounts from resources provides sufficient guidance in this area and



detailed and accurate information on which plans are excluded. In view of this, any additional guidance that the Department may issue in the future will address new questions or issues as they arise.

In this final rule the Department also made minor technical changes to streamline the language from the proposed § 273.8(e)(2)(v) on tax-preferred accounts. Finally, legislation subsequent to this proposed rule added funds in Achieving a Better Life Experience (ABLE) program accounts as tax-favored savings accounts for people with disabilities under IRC Section 529A through the Tax Increase Prevention Act of 2014, Public Law 113–295. The Department is adding qualified ABLE programs as excludable resources at § 273.8(e)(2)(ii), consistent with Department policy issued on April 4, 2016.

#### 8. Exclusion of Education Accounts From Resources § 273.8(e)(20)

*How did the law change the handling of education accounts as a SNAP resource?*

Section 4104(c) of the FCEA, which amended Section 5(g)(8) of the Act (7 U.S.C. 2014(g)(8)), excluded education savings accounts described in Sections 529 and 520 of the IRC from resources in SNAP eligibility determinations. The FCEA provided the Secretary with discretion to exclude other education savings accounts.

*How did the Department propose to codify this provision in the SNAP regulations?*

The Department proposed to add a new paragraph § 273.8(e)(20) to exclude all funds in education savings accounts from resources if the funds are described in section 529 or section 530 of the IRC. (Section 529 of the IRC describes qualified tuition programs that allow a contributor to contribute funds or purchase tuition credits for qualified education expenses for a designated beneficiary. Section 530 of the IRC describes Coverdell Education Savings Accounts, which are trusts created to pay the education expenses of the designated beneficiary.) The Department would also maintain discretion to exclude other tax-preferred education savings accounts in the future.

*How did commenters react to the proposed provision?*

Virtually the same number of commenters that provided comments on the proposed exclusion of qualifying retirement accounts also provided comments on the exclusion of

qualifying education accounts, the only difference being that one hunger advocate commented only on the retirement account provision and one nonprofit commented only on the education account provision. As with the retirement account provision, all commenters generally approved of the proposal.

Several commenters urged the Department to exercise its discretion by excluding any future education accounts if the fund is described in section 529 or section 530 of the IRC, as provided in the FCEA. The Department cannot anticipate changes in the tax law or predict how future education savings accounts will be structured. Therefore, the Department will not amend the regulatory language from the proposed rule to accommodate this comment.

Commenters urged the Department to issue guidance on how to identify the type of education accounts excluded under this provision. The Department appreciates the commenters' recommendation and may develop guidance outside this rulemaking to assist State agencies identify qualified tuition programs described in sections 529 and 530 of the IRC.

One commenter suggested the location of the exclusion of retirement accounts at 7 CFR 273.8(e)(2) while educational accounts are excluded at 7 CFR 273.8(e)(20) may cause some readers to miss the educational accounts exclusion. The Department considered the comment but decided the location of the provisions was not sufficiently critical to relocate the educational accounts exclusion.

In this final rule the Department also made minor technical changes to streamline the language from the proposed § 273.8(e)(20)(iii) on education savings accounts.

#### 9. Expansion and clarification of simplified reporting provisions, § 273.12(a)

*How did the law expand simplified reporting?*

Section 4105 of the FCEA removed a restriction in section 6(c)(1)(A) of the Act (7 U.S.C. 2015(c)(1)(A)) that prohibited periodic reporting for certain households, including homeless, migrant and seasonal farm workers, and adults who are elderly or have a disability in households with no earnings. The previous statutory restriction discouraged State agencies from including these households in their simplified reporting systems. As amended by the FCEA, Section 6(c)(1)(A) of the Act now limits the frequency of periodic reporting for

homeless and migrant or seasonal farm worker households to every 4 months and for households in which all adult members are elderly or have disabilities with no earned income to once a year. To be consistent with current law, regulations published on January 29, 2010 (75 FR 4912), extended simplified reporting to all households that are certified for at least 4 months.

*Did commenters address these proposed changes to simplified reporting?*

Yes, the Department received several comments on the proposed language at § 273.12(d)(6)(iii)(B) pertaining to the due dates for periodic reports. One commenter suggested using language similar to that provided for filing monthly reports at § 273.21(h)(1)(i). Another commenter stated that requiring the periodic report between 4 months and 6 months after certification was too rigid a time period and risked the possibility of case closure due to procedural reasons. This commenter also noted that the proposed language on due dates for receipt of periodic reports is too vague and needs to specify the period of time for which changes must be reported.

Although these comments are directed to a paragraph about simplified reporting that the Department had proposed to clarify, the commenters focused on language that had not actually been updated but had been included only as part of a proposed reorganization of § 273.12. For this reason, the Department considers many of these comments to be outside the scope of the proposed rule and will not amend the proposed text to incorporate these comments. However, the Department appreciates the feedback and encourages commenters to resubmit these comments in any future rulemaking that addresses substantive changes to client reporting systems. As discussed below, the Department decided to make certain changes in this rule that were recommended by a commenter that will clarify the regulations.

*How did the Department propose to reorganize § 273.12?*

The Department proposed to reorganize § 273.12 to improve the readability of the section and to clarify aspects of current reporting requirements applicable to the reporting systems covered in this section of the SNAP regulations. Currently, there are four SNAP client reporting systems authorized in SNAP regulations. Three of these client reporting systems—change reporting (also known as incident reporting), quarterly reporting,

and simplified reporting—are covered in § 273.12. Monthly reporting is covered in § 273.21.

The proposed change would have reorganized § 273.12 so that all provisions applicable to each of the three reporting systems contained in this section of the regulations (change, quarterly, and simplified) would be located together for ease of reference.

*What comments did the Department receive on the proposed reorganization of § 273.12?*

The Department received comments from 66 individuals and groups about the proposed changes to this section of SNAP regulations. Commenters opposed specific provisions within § 273.12, most of which have been part of codified regulations for years and were not proposed to be revised. Three commenters addressed the proposed reorganization, and they were generally critical of the proposal. Several commenters pointed out that our proposed reorganization was duplicative because the same provisions that applied to all three reporting systems were repeated three times in the reorganized text. They recommended an alternate approach to reorganizing reporting system provisions and also noted numerous technical errors in the proposed reorganized text. They recommended that the Department combine all periodic reporting systems—quarterly, simplified and monthly reporting systems—into a single subsection and extend the client protections that they believe to be part of the monthly reporting system to quarterly and simplified reporting.

*Does this final rule include a reorganization of § 273.12?*

No. In view of the negative response from commenters, the Department has decided to exclude the proposed reorganization of client reporting systems in the final rule. The number and specificity of comments about codified regulations on client reporting systems indicates that this is an area of program operations that needs a more detailed approach to improve clarity over and above a reorganization of text. Indeed, the complexity of the issues as well as the continuing evolution of client reporting systems, particularly as State agencies modernize their eligibility and certification systems, indicate such a revision warrants a separate rulemaking. Thus, although we believe that regulations on client reporting systems would benefit from reorganization, we agree that more substantive changes should be

considered beyond the proposed reorganization.

*What changes to § 273.12 are made in the final rule?*

The Department will adopt the proposed changes that clarify the timeframes for periodic reporting by certain households under simplified reporting in § 273.12(a)(5)(iii)(A) and § 273.12(a)(5)(iii)(B). The Department is also making edits to the requirement to report changes in vehicle assets at § 273.12(a)(1)(iv) and in liquid resources at § 273.12(a)(1)(v). These changes are made to clarify that households need not report changes in vehicles and liquid resources, if those resources are excluded from the SNAP eligibility determination per § 273.8. In addition, based on comments, the Department is clarifying the provision dealing with State action on “unclear” information at § 273.12(c)(3), and the requirement regarding the timeframe during which households must report changes in income at § 273.12(a)(2).

The comments regarding State action on unclear information obtained by a State focused on data matches, but also apply to any information that is not considered to be verified upon receipt. The commenter pointed out that the information obtained may be old, outdated, or otherwise inaccurate. The commenter suggested that States be prohibited from requiring households to provide verification as a result of a data match unless the information is current and suggests the household is ineligible.

The Department agrees that many data matches that deal with income are “old” because income data is typically reported by quarter and is not available until a month or two after the end of a quarter. Data from new hire, employer, and unearned income data bases are generally more current, but not all data matches will be made prior to the household’s current participation. This is why both the current and proposed rules treat such information as unclear.

Some income matches may show minor discrepancies with the income reported by the household, may be based upon data that may be several months old, and may not have been required to be reported. When this occurs, State agencies sometimes follow up using a Request for Contact (RFC). Households that struggle to understand and respond timely to the State’s inquiries can inadvertently lose eligibility, even if the unclear information was not accurate or would not have affected eligibility. If a household does not respond to a Request for Contact, they could ultimately be terminated, have to

reapply and experience a loss of benefits in the process; even if the matching information was outdated or generally consistent with the information that the household had already reported to the State. This can clearly create an access issue for eligible households. It also contributes to “churning” where households go on and off the program, losing benefits in the process and adding to the States’ administrative burdens.

Some data (usually from governmental sources) that provide current information directly from the specific source may be considered to be verified upon receipt and can be acted upon without requiring contact with the household. If a State receives current information that is verified upon receipt—for example, because it is from a highly reliable government source—the State must act on that change using the other information it has in the case file, such as removing income for an individual no longer in the household. If that action results in a reduction in benefits, the State must issue a notice of adverse action that explains why the change was made, so that if a household disagrees with the underlying data that resulted in the change, the household has the ability to provide evidence to the State.

In response to comments, under the final rule, States may not follow up on unclear information with an RFC unless the information the State receives: (1) Is less than 60 days old; and (2) reflects information that, if true, was required to be reported under the applicable reporting requirements in 7 CFR 273.12 for the reporting system to which the household has been assigned. For example, in the case of households assigned to simplified reporting, the unclear information would, if true, place the household’s income above 130 percent of the federal poverty line. Or, in the case of households assigned to change reporting, the information, if true, would result in an income change that was above the \$100 reporting threshold or reflect a change in household composition.

Under simplified reporting, households are not required to report changes in income outside of the periodic report or a recertification action unless the change would result in an income level above the household’s gross income limit as specified at § 273.12(a)(5)(v). It is inconsistent to tell households they are not required to report changes in income below this limit and then, based upon a data match, require that they respond to information (and potentially lose benefits if they fail to respond) that does

not appear to exceed their income limit. Therefore, this rule prohibits States from following up on unclear information that does not meet the reporting criteria for simplified reporting described in 273.12(a)(5) until the next recertification action or periodic report.

Likewise, a similar policy will be applied to households assigned to change reporting. For these households, a State would only follow up on current, unclear information if the information would have been required to be reported if correct. It is also inconsistent to tell households they are not required to report changes in income below \$100 and then, based upon a data match, require that they respond to a request for information (and potentially lose benefits if they fail to respond) that does not appear to exceed this threshold. Thus, unclear information that suggests income changed by less than the \$100 income change reporting threshold would not be followed up on. Therefore for households subject to change reporting, this rule prohibits States from following up on unclear information that does not meet the criteria for what must be reported in 272.12(a)(1) until the next recertification action or periodic report.

For example, at application a household reports that it has earned income based upon working between 25 and 32 hours a week at \$12 an hour. The State verifies the most recent 30 days of income and correctly projects about \$1,400 a month in earned income over the certification period based upon working about 27 hours per week. Six months into the certification, an automated data match indicates that the income averaged \$1,600 per month for a three-month period. Under the final rule, for a household subject to simplified reporting, a State may not pursue the matter until the household applies for recertification since the income does not exceed the gross income limit and was not required to be reported. For a household subject to change reporting, a State would pursue the matter with an RFC because this discrepancy exceeds the \$100 reporting threshold.

Under any reporting system, unclear information that indicates that the information that the State used at the time of certification may have been incorrect is a different matter. States should consistently follow up on new information that indicates differences with the information used at the time of certification as this new information is not a "change" in circumstances subject to reporting and can represent integrity issues. For example, if a work number

data match shows earnings in the month of certification that a household member failed to report during the certification process, the State should follow up with an RFC and potentially file a claim against the household for any resulting over-issuance if the household does not provide evidence that the data are incorrect. If the earnings occurred after certification (and was thus a change in circumstances) and did not appear to bring the households eligibility into question, in the case of a household assigned to simplified reporting, the State would follow up on the information at the next certification action or periodic report, but not before.

In the case of household composition changes, if the information is verified upon receipt, the State must take action, regardless of the household's reporting system. Furthermore, a State may not issue an RFC based on unclear information that is not current, or is about a change in household composition that a household would not have been required to report, if accurate.

There are two types of household composition changes that follow different procedures. Under the final rule, if a State receives match information pursuant to a match described in § 272.13 or § 272.14, the State will follow up with a notice of match results and use the procedures in § 273.12(c)(3)(iii). The Department makes conforming changes at § 272.13(b)(4) and § 272.14(c)(4) to reference the verification process in § 273.12(c)(3)(iii).

For households subject to change reporting, if the household fails to respond to the notice of match results or does respond but fails to provide sufficient information to clarify its circumstances, the State agency must issue a notice of adverse action as described in § 273.13 that terminates the case.

For any households subject to reporting requirements other than change reporting, if the household fails to respond to the notice of match results or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency must act on that change using only the other information it has in the case file, such as removing an individual that is no longer in the household and removing his or her income. If benefits are decreased or the household is to be terminated from program participation, the State agency must issue a notice of adverse action as described in § 273.13.

The notices of match results must clearly explain what information is needed from the household and the

consequences of failing to respond to the notice as explained above.

For information that does not meet the above criteria related to when a State must follow up on unclear information, the State agency shall not act or follow up on the unclear information until the household's next recertification action or when its next periodic report is due. However, a State may follow up with a household to provide information on a voluntary basis if the information would result in an increase in benefits, but the State may not take adverse action if the household does not respond. The final rule also clarifies that unclear information is information that is not verified or verified information where the effect on the household's certification is not apparent. These provisions are in this final rule at § 273.12(c)(3).

FNS will be updating Quality Control (QC) materials as necessary to ensure that if States follows the requirements laid out in the final rule and households reports any changes in accordance with their reporting system's requirements, there is no household or agency error.

Comments were also received regarding some important differences between the regulatory requirements governing the procedures for monthly reporting at § 273.21 and periodic reporting in § 273.12(a)(5). The comments pointed out that the monthly reporting provisions offered certain protections to households that failed to file required reports on time that were absent from the periodic reporting provisions. The Department examined these differences and included changes in this final rule that would better conform the provisions of the two reporting systems. The additions to the periodic reporting provisions include a requirement to provide household with a notice reminding them of the need to submit a periodic report and the option of reinstating households that provide reports before the end of the issuance month. The final rule also includes language that codifies current policy and practice regarding using a combined report form for SNAP and TANF or Medicaid and that non-applicant household or family members need not provide SSNs or information about citizenship or immigration status on periodic report forms.

In addition, based on a comment received, the Department has made a clarification by referencing the asset limits as indexed to inflation as described in § 273.8(b). Therefore, with this modification, we will adopt the proposed clarification on household requirements for reporting changes of

the value of liquid assets. This provision is found in this final rule at § 273.12(a)(1)(v). This final rule also adopts the Department's proposed language on reporting the acquisition of licensed vehicles at § 273.12(a)(1)(iv).

The Department also received a comment regarding the need to index the amounts of change to income that trigger a report for households assigned to change reporting and the need to make the amount for general assistance (GA) consistent with unearned income generally. The Department agrees with this comment and has increased the amount of change in GA benefits that will require a household to report (in cases that are not jointly processed.) from \$50 to \$100. The Department has also indexed the \$100 amounts that trigger household's reporting requirements to the Consumer Price Index (CPI).

Beginning in FY 2018, and for every fiscal year thereafter, the dollar amounts will be adjusted and rounded to the nearest \$25 to reflect changes in the CPI for the All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor (for the 12-month period ending the preceding June).

Finally, based upon a comment received, the Department has clarified the requirement regarding the timeframe in which State agencies shall require households to report changes in income. Current regulations say that the State agency has the flexibility to require the change in income to be reported as early as 10 days from the date that the household becomes aware of the change or as late as 10 days from the date that the household receives the first payment attributable to the change. This flexibility has created confusion when a household reports a change in income, but cannot verify the new amount. If the household waits to report until it has a paycheck in hand, the time spent waiting for the verification may be beyond the required timeframe. Therefore, to improve consistency with reportable changes in income, § 273.12(a)(2) has been modified to require reporting within 10 days of receipt of the first payment attributable to the change. Additionally, § 273.12(a)(2) of the final rule retains language that appeared in the proposed rule at 273.12(b)(6)(ii) that provides States with the option to require that households report changes within 10 days of the end of the month in which the change occurred.

10. Transitional Benefits Alternative (TBA) §§ 272.2, 273.26, 273.27, 273.29, 273.32

*How did the FCEA change the TBA option?*

Section 4106 of the FCEA amended Section 11(s)(1) of the Act to permit State agencies to provide transitional SNAP benefits to households with children that cease to receive cash assistance under a State-funded cash assistance program (SFCA). Prior to this change in the law, States had the option to provide transitional SNAP benefits only to households that stopped receiving Federally-funded TANF assistance.

*How did the Department propose to implement this provision?*

The Department proposed to amend State plan requirements at § 272.2(d)(1)(xvi)(H) and Subpart H in part 273 of the SNAP regulations, to specify that a household's eligibility for TBA may be based on the termination of SFCA in addition to the termination of TANF. The Department proposed to specify that a household may qualify for an additional TBA period if the household participates in a SFCA program that continues after TANF has ended, and then the household subsequently stops participating in the SFCA. The Department also proposed that, in administering TBA based on the termination of SFCA, State agencies would follow the same procedures they currently use to administer TBA based on termination of TANF. In making this change, we proposed to add SFCA to the following provisions in Subpart H of part 273:

- § 273.26—introductory paragraph and paragraph (a);
- § 273.27(a) and (c);
- § 273.29(c) and (d); and
- § 273.32.

*What types of cash assistance are covered under TBA?*

Sixty-two commenters requested clarification on the eligibility of households receiving cash assistance, TANF or State Maintenance of Effort (MOE) funded assistance, or SFCA. Specifically, they requested clarification that the exit must be from cash assistance for both TANF and State-funded benefits programs. One commenter requested examples of what would be considered a SFCA program.

Section 11(s)(1)(A) of the Act authorizes States to provide TBA for a household that ceases to receive cash assistance under a State program funded under Part A of Title IV of the Social Security Act. TANF is authorized under

part A of Title IV of the Social Security Act, and the cash assistance that eligible low-income households receive may be funded in part by the TANF Federal grant or by State MOE funds. The Department is clarifying the description of TANF at § 273.26(a)(1) as the program authorized under Part A of Title IV of the Social Security Act, and that Federal cash assistance may include both TANF and State MOE funds.

Based on the language in Section 11(s)(1)(B) of the Act, the Department is clarifying in § 273.26(a)(2) that SFCA programs include State-funded programs that provide cash assistance to families with children. These SFCA programs are separate and distinct from State-level programs funded by TANF. An example of an eligible SFCA program would be a State general assistance program that provides cash assistance to families with children. Programs that are not intended for families with children or do not provide a cash benefit are ineligible under this provision. TBA ensures that households with children that are leaving cash assistance for either TANF or State-funded benefits programs can continue to meet their nutritional needs as they transition from these cash assistance programs to the workforce.

*What about programs funded by local governments?*

Ten commenters requested clarification on whether SFCA programs that rely on local funds would qualify under this provision. Several commenters noted that some States require local governments to contribute funding to statewide SFCA programs. FNS guidance issued on August 29, 2008, (see <http://www.fns.usda.gov/questions-and-answers-certification-issues-2008-farm-bill-2>) stated that county-funded programs were not eligible SFCA programs for TBA. While we continue to hold to this guidance, we agree with commenters that SFCA programs may include local level funds as part of the funding stream. Thus, the Department will amend proposed § 273.26(a)(2) to clarify that eligible SFCA programs that are funded by both State and local funds provided that the programs are intended to be statewide.

*What is the relationship between participation in TANF and SFCA and receipt of TBA?*

Two commenters requested clarification on eligibility for TBA when participation in the SFCA program is concurrent, sequential or provided as an alternative to TANF. They also requested that the regulatory language clarify that State agencies may provide

TBA for households leaving TANF for SFCAs and again when leaving SFCAs. In the August 29, 2008, guidance previously identified, the Department indicated that a household may receive TBA when leaving TANF and again when leaving SFCAs, resulting in an additional period of TBA eligibility for the household. If participation in a SFCAs program is ending, whether concurrently with TANF or as an alternative to TANF, the household would be eligible for one period of TBA up to 5 months, as described in the State's plan of operation. The Department amended the proposed § 273.26(b)(3) to reflect that the SFCAs program may be concurrent, sequential, or alternative to TANF.

*What issues raised by commenters on TBA are considered outside of the scope of the rule?*

Commenters raised a number of questions or asked for clarifications on issues that were not addressed in the proposed rule. Such comments addressed aspects of TBA that the Department did not propose to revise. The Department included the existing TBA regulations in the proposed rule in order to incorporate the change in the law with regard to SFCAs programs. The Department did not propose amendments to the basic provisions of TBA that are codified in the SNAP regulations. The more frequently mentioned comments included requests for clarification that households with partial sanctions in TANF or SFCAs may still receive TBA (63 commenters) and requests for further explanation on the issue of TBA being a frozen benefit that may not be changed except in two instances (62 commenters). For this reason, we consider such comments to be outside the scope of the proposed rule because they did not specifically address issues related to the proposal to add of SFCAs programs to the TBA regulations.

We appreciate the effort that commenters put into providing these comments. As with the comments received on client reporting systems, it appears that commenters, particularly those in the advocacy community, have noted a number of TBA-related issues that could benefit from additional guidance. The Department appreciates the thoughts and feedback on TBA issues, and encourages commenters to re-submit these suggestions in future rulemakings.

*Were any additional changes made based upon the comments received on TBA?*

Yes, one commenter pointed out that the regulations should be revised to clarify that SNAP households should be able to shift from the transitional benefit period back to the regular SNAP program based on a joint TANF/SNAP application. The commenter believed that the TANF application should be treated as a joint TANF/SNAP application, consistent with current 7 CFR 273.2(j). As required for all SNAP non-expedited applications, the State would have 30 days to determine the household's SNAP eligibility using information from the new application. Consistent with these changes, the commenter suggested that the TBA notice be revised to state that households that reapply for TANF cash assistance will be asked to reapply for SNAP at the same time. The commenter also recommended revising the regulations to acknowledge that the State agency may adjust the SNAP benefit to account for automatic annual changes in benefit rules, such as the annual cost of living, standard deduction adjustments and excess shelter deduction cap adjustments. The Department agrees that a revision to the final regulation is needed to clarify this process and made the necessary changes.

The Department is also making minor changes to clarify 273.26(b) and (d) to add MOE and clarify that SFCAs may be received concurrently, sequentially or alternatively to TANF, based upon comments. In addition, the Department is amending § 273.27 to again include the State MOE funds and clarify that States need not obtain additional information from household prior to their participation in TBA. Finally, based on a comment that the Department is amending § 273.29 and § 273.32 to clarify that TBA households applying for TANF or SFCAs benefits shall be jointly processed for SNAP benefits.

One commenter noted that while 40 States have sanction policies that terminate cash assistance because of noncompliance, it is also common for States to reduce the cash assistance benefit amount by removing the individually sanctioned household member. The Department appreciates this insight and is altering the regulatory language to clarify that when a household has a member who has been sanctioned, the remaining eligible household members may receive transitional SNAP benefits if the cash assistance ends for another reason.

11. Increasing Benefits for Small Households: Minimum Benefit Increase §§ 271.2 and 273.10(e)(2)(ii)(C)

*What is the legal basis for raising the minimum benefit?*

The Food Stamp Act of 1977 established a monthly minimum benefit of \$10 per month for one-person and two-person households, and the amount has not been adjusted since that time. Section 4107 of the FCEA amended section 8(a) of the Act (7 U.S.C. 2017(a)) to increase the minimum benefit amount for one-person and two-person households from \$10 to eight percent of the maximum allotment for a one-person household, rounded to the nearest whole dollar.

*What did the Department propose regarding the minimum benefit?*

The Department proposed to amend the regulations at § 273.10(e)(2)(ii)(C) to incorporate the FCEA provision indexing the minimum benefit amount to eight percent of the maximum allotment for a one-person household, rounded to the nearest whole dollar. In addition, the Department proposed to update the definition of minimum benefit in § 271.2 to remove the reference to the former minimum benefit amount of \$10 and specify that the minimum benefit shall be based on the provisions of § 273.10.

*How did the public respond to the minimum benefit proposal?*

Sixty-one commenters generally approved of the proposal regarding the minimum benefit. Fifty-eight commenters suggested that the Department ensure that States with combined application projects (CAPs) and other demonstration projects make annual updates on a timely basis. Eight commenters requested general guidance. One individual generally agreed with the proposal, but suggested that the minimum benefit amount should be \$50.

The Department appreciates commenters' feedback. The FCEA required the increase of the minimum benefit and the Department made a straightforward update to the regulations to implement it. Existing procedures and requirements surrounding the minimum benefit remain. The Department is adopting the provisions as proposed. Any additional guidance will be provided outside of the rulemaking process.

12. Employment and Training (E&T):  
Funding for Job Retention Services,  
§ 273.7(e)(1)

*What changes did the Department propose to make to the E&T program?*

The Department proposed to implement Section 4108 of the FCEA, which amended Section 6(d)(4) of the Act, to add job retention services of up to 90 days as an allowable E&T component. The Department proposed to revise the SNAP regulations at § 273.7(e)(1) to incorporate this change. We received 64 comments in total on this provision.

*Will the Department permit State agencies to determine when the 90 days of services start?*

The Department received 61 comments requesting that the rule specify State agency discretion on the start date of job retention services. The Department agrees that individual circumstances may warrant job retention services that begin at various times, such as on the day a job offer is accepted, the day the individual reports the information to his or her E&T case manager, the first day of the job, or other time based on the availability and type of services. Therefore, the Department will permit State agencies to identify when the 90 days of job retention services start.

The Department also received one comment requesting that job retention services be available to an E&T participant for each new job the individual obtains. The Act provides for a period of not more than 90 days of job retention services after an individual who received E&T services gains employment. For example, if an individual gains employment through a new job, receives 90 days of job retention services, and then later finds a different job, he or she would generally not be eligible for a new 90-day period of job retention services. However, if the individual re-engaged in E&T services and then gains new employment, he or she would be eligible for additional job retention services. For example, there may be circumstances where an individual participates in job search, gains employment and receives 90 days of job retention services. This individual may later reengage with E&T after a job loss to search for work or obtain career or technical training to find a better job and could qualify for an additional 90 days of job retention services. The Department does not want to limit State agencies in helping clients obtain regular employment with good wages and career progression. We understand

that State agencies are in a better position to determine when job retention services might be appropriate for a new hire and the Department is allowing for State agency flexibility for this issue in § 273.7(e)(1)(viii).

Because job retention services are an E&T component, they need to be connected to receipt of SNAP even as we recognize that they may not begin until after a job commences and, in some cases, a household has left the SNAP program. The Department is taking this opportunity to clarify that an individual must be receiving SNAP benefits in the month of or the month prior to beginning job retention services. The Department is amending § 273.7(e)(1)(viii) in this final rule to this effect.

*Are job retention services available to those who previously received E&T services, whether or not it led to employment?*

The Department received one comment asking whether job retention services would be available to E&T participants if the components they participated in did not lead directly to employment. The Act provides that these services intend to ensure job retention after an individual who received E&T services gains employment. The Act does not require a link between the E&T activity and employment itself. Additionally, we recognize that it may be difficult to establish a link between participation in an E&T component and gained employment when there is a gap in services or a component does not have a direct link to a job. Therefore, the Department is not requiring evidence of a link between an E&T component and job entry in order for the State agency to provide job retention services. State agencies have discretion on the amount of time that may pass between an E&T component and start of job retention services. However, this rule does require that the household must have been receiving SNAP in the month of or the month prior to beginning job retention services.

*Are job retention services limited to those who leave the program due to increased earnings?*

The Department received 62 comments stating that the proposed rule unnecessarily limited job retention services to individuals losing SNAP benefits as a result of increased earnings. The comments pointed out that there may be circumstances such as where someone leaving SNAP would not have increased earnings but would need job retention services, such as an

individual who took a job with reduced hours at a good wage with the hope that hours would increase or a lower-paying job with the opportunity for quick promotion.

The Department agrees that there may be circumstances where job retention services are appropriate for households leaving SNAP. However, there may also be circumstances where an individual or household is leaving SNAP due to an intentional program violation or failure to comply with SNAP work requirements without good cause. Therefore, the Department is clarifying in § 273.7(e)(1)(viii) that State agencies may extend job retention services to individuals who participated in another E&T component and are leaving SNAP for any reason other than a disqualification. As provided in this rule, the State agency may not disqualify an individual who refuses or fails to comply with job retention services.

The Department is taking this opportunity to clarify that an individual need not complete an E&T component in order to start receiving job retention services. For example, an individual assigned to two months of job search may find a job after two weeks and would then be eligible for job retention services.

*Does the 90-day limit apply to case management?*

The Department received one comment asking for clarification on the limits of case management. State agencies may provide E&T case management to participants as long as a participant is engaged in an E&T program or component. Since job retention is an E&T component, individuals receiving job retention services are eligible for case management up to the 90-day limit.

*Are child care and transportation allowable participant reimbursements under a job retention component?*

The Department received 60 comments requesting that child care and transportation be included as allowable participant reimbursements under a job retention component. The Department omitted transportation and dependent care from the list of allowable services and reimbursable participation costs in the preamble to the proposed rule because Section (6)(d)(4)(I) of the Act specifically provides for transportation and dependent care as allowable E&T participant reimbursements. The Department is clarifying that transportation and dependent care are allowable participant reimbursements under the job retention component,

including for individuals no longer receiving SNAP.

13. Application Signature Systems  
 §§ 273.2(c)(1), 273.2(c)(3) and  
 273.2(c)(7)

*What is the statutory authority for the proposed changes regarding signatures?*

Section 11(e)(2)(C)(i) of the Act allows for various types of signatures. Section 4119 of FCEA amended section 11(e) of the Act (7 U.S.C. 2020(e)) to permit a State agency to accept telephonic signatures, subject to certain conditions. These conditions, described at Section 11(e)(1)(C)(ii) of the Act, require that a State agency:

- Record for future reference the verbal assent of the household member and the information to which assent was given;
- Include effective safeguards against impersonation, identity theft and invasions of privacy;
- Not deny or interfere with the household's right to apply in writing;
- Promptly provide to the applicant a written copy of the complete application with instructions for a simple procedure to allow correction of any errors or omission;
- Comply with all statutory provisions for processing applications described at Section 11(e)(1)(B) of the Act;
- Satisfy all requirements in the Act and other laws applicable to SNAP and that the date of the verbal assent is considered to be the date the application is signed; and
- Comply with all other standards established by the Secretary.

In the proposed rule, the Department used the term "spoken signature" to include means of assenting to information other than written or electronic signatures, with the most obvious example being an interactive interview with a SNAP household over the telephone. However, the term "spoken signature" has resulted in confusion and questions as to whether a "spoken signature" and a "telephonic signature" is interchangeable.

To clarify this confusion, the Department uses the term "telephonic signature" in this final rule, which more directly reflects the statutory language. The language in Section 4119 refers to the option for a "telephonic signature", and lays out requirements for a system to capture telephonic signatures allowing households to sign an application through a recorded verbal assent over the telephone. Although the Department no longer uses the term "spoken signature" in this final rule, an in-office spoken signature may be

necessary in some circumstances, for example, as a reasonable accommodation for an applicant with disabilities.

*How did the Department propose to implement the telephonic signature option?*

To implement the statutory provisions for telephonic signatures, the Department proposed new § 273.2(c)(7), which addressed specific types of application signatures. As proposed at § 273.2(c)(7)(viii), a State agency opting to accept telephonic signatures must:

- Specify in its State plan that it has chosen this option;
- Use terms that clearly indicate to the household how to provide assent or agreement during an interview, such as "yes", "no", "I agree" or "I do not agree";
- Promptly provide to the applicant a written copy of the completed application, with instructions for a simple procedure for correcting any errors or omissions;
- Allow the household at least 10 calendar days to return the corrections; and
- Use the date of the telephonic signature as the date of the application.

*What other changes were proposed for application signature systems?*

The Department proposed a number of requirements for application signature systems described in proposed § 273.2(c)(7), both to implement the FCEA and to clarify additional standards for such systems. First, the Department proposed to extend certain statutory criteria for telephonic signatures to all types of application signatures, namely the requirements to: Record for future reference the information and the assent to the information on the application; include effective safeguards against impersonation identity theft, and invasions of privacy; not interfere with a household's right to apply in writing; provide applicants a written copy of the completed application with instructions for a simple procedure to correct errors or omissions (excluding applications with a written signature); comply with SNAP regulations for bilingual requirements; and satisfy all applicable statutory requirements for SNAP applications with the date of verbal consent by the household considered to be the date of the application for all purposes.

Second, the Department proposed to specify unique criteria relevant to certain types of signatures. The signature types identified in the proposed rule were handwritten

signatures (which may include signing with a mark or "X"), electronic signatures, telephonic signatures, and gestured signatures. As explained in the preamble to the proposed rule, the Department included gestured signatures to provide those with hearing disabilities equal access to SNAP. As a State option under SNAP regulations, a gestured or visual signature may provide an alternative to a handwritten signature and may be an efficient means of giving assent as part of an interactive interview. Gestured signatures to indicate "yes" or "I agree" would include those in American Sign Language, Manually Coded English, or similar language or method during an interview. Except for handwritten signatures, the Department proposed that applicants have at least 10 calendar days to review and correct any errors or omissions to applications with electronic, telephonic or gestured signatures. The Department proposed that States have the option to accept unwritten signatures and written signatures using a mark or "X", but are not required to do so.

Third, the Department proposed amendments to the regulations so that the provisions would also apply to applications submitted at recertification (§ 273.14(b)(2)) and to monthly, quarterly, and simplified periodic reports (§§ 273.21(h)(2)(vi), 273.12(c)(5)(ii)(F), and 273.12(d)(5)(ii)(F), respectively) required to be submitted under the client periodic reporting systems. Periodic reporting forms are functionally equivalent to applications in that they are clients' signed statements of circumstances. Since unwritten signatures suffice for applications and reapplications, the Department proposed that unwritten signatures should also suffice for periodic reporting forms. However, as with applications, a State agency is not required to accept unwritten signatures. The Department did not propose to extend this option to change reporting forms, since there is no Federal requirement that a household assigned to a change reporting system must sign the report form.

*Did the Department propose any other changes to the application process?*

Yes. As part of a general updating of application submission procedures and availability of application provisions, we proposed to reorganize §§ 273.2(c)(1) and 273.2(c)(3). In doing so, the Department reaffirmed certain fundamental aspects to the SNAP application process, including the household's right to file an application



the same day it contacts the SNAP office during office hours without an interview, and with only a name of a responsible member of the household or the authorized representative, address and signature. The Department also proposed to specify that households have a right to apply or reapply in writing, and the State agency must not interfere with this right. The Department also proposed at § 273.2(c)(1)(v) that the State agency must give all households who file non-paper applications a copy of the information provided and that these households must have 10 days to review the information that has been recorded electronically. Under proposed § 273.2(c)(3)(ii), the Department specified that the State agency must make paper application forms readily accessible and available even if the State agency also accepts application through electronic means.

The Department also proposed to add a new provision for application forms at § 273.2(b)(1)(x) to specify that an application form may be an on-line document, a recorded telephonic conversation, or a recorded visually signed conversation.

*What did commenters say about gestured signatures?*

Many commenters (55) approved of the Department's proposal to add gestured signatures as an optional type of signature for SNAP applications. The Department received no negative comments on this proposal, and the final rule retains the provision, with some modifications, as an optional signature type, described at § 273.2(c)(7)(ix). Those modifications include specifying that a State agency that chooses to accept gestured signatures must specify it has taken this option in its State plan of operation, and eliminating the ten-day period for households to return corrections to the State agency.

*How did commenters respond to the State option to establish telephonic signature systems?*

Most commenters supported the Department's inclusion of non-traditional signatures for applications, including telephonic signatures, but several requested clarifications with regard to telephonic signature systems. One commenter considered the proposed rule unclear on how to submit applications as recorded oral conversations, and requested that the Department clearly specify that applications may be made by telephone.

The Department wishes to distinguish between applying for SNAP benefits by

telephone and providing a telephonic signature to complete an application. Telephonic signatures are not limited to telephonic applications and can be used to sign any application regardless of the means by which the application is completed (e.g., online, telephonically, paper).

The FCEA requires that these systems record "the verbal assent of the household member and the information to which assent was given." For a signature to be considered a telephonic signature, the system must make an audio recording over the telephone of the household's verbal assent as well as a summary of what the household is agreeing to, but not the entire telephone conversation. The Department envisions that an acceptable summary could include an eligibility worker's reiteration of the information the household provided during the call, such as updates to income, household composition, or deductions. This definition is not met if State or local office staff attest to securing the verbal assent over the telephone without actually making an audio recording over the telephone of the household member's attestation. The Department encourages States to consult with their legal counsel to ensure that the captured telephonic signature meets the State's legal definition of a signature and the recorded portion constitutes "assent" under that definition. In the final rule, the Department clarifies this requirement at § 273.2(c)(7)(viii)(B).

To be a valid telephonic signature, the recorded verbal assent must be linked to the application itself. This is to ensure the State agency has ready access to the audio file containing the recorded verbal assent. Telephonic signature files must be retrievable and must also comply with Federal records retention requirements in 7 CFR 272.1(f). The Department is revising the proposed regulations at § 273.2(c)(7)(viii)(C) to make this clear. The Department notes that it is also revising the proposed regulations for handwritten, gestured and telephonic signatures, for clarity and consistency, to indicate that the date of application is the date the application is received by the State agency, and that if the application is received outside normal business hours the State agency will consider the date of application the next business day.

Two commenters noted that an application should be treated as filed whenever a household leaves it with a community partner or similar entity charged by the State agency to assist with application processing. These commenters emphasized that households submitting applications at

locations other than traditional local SNAP offices should not have their benefits delayed, and treating the application as filed when it is submitted to the community partner would help to address this problem.

In accordance with 273.2(c)(1), the date of the application is the date it is received by the State agency. However, a State may enter into a formal agreement, such as a contract or Memorandum of Understanding (MOU), in which a third-party accepts applications on behalf of the State agency. Such an agreement may stipulate that the date the application is received by the third-party is the date of the application. FNS does not have the authority to enforce program time requirements on entities other than State SNAP agencies. Organizations that fail to deliver the applications on the same date they receive them from a household are delaying the household's filing date and, potentially, the timeframe in which they will begin to receive assistance. Organizations or entities informally engaged in application assistance who do not have a contract or MOU with the State should make every effort to submit applications timely to the State agency so that the filing date will be as early as possible and benefits will not be delayed.

State agencies that choose to implement a telephonic signature process with a contracted third-party, or a third-party acting on behalf of the State agency through a MOU, such as a community-based organization, must ensure the records in the contractor's possession are readily accessible. Also, the State must ensure that the electronic signature files are readily accessible.

In addition, State agencies using a third party should be aware of the following:

- State agencies must follow the appropriate merit system personnel policy.
- Regardless of where the telephonic signature file is stored, the State owns the signature and any other data produced under contract by a third-party entity using Federal funding.
- Telephonic signature files and related data stored on third-party hardware must be transferred to the State agency in a usable format should the third party relationship with the State agency terminate. The third-party cannot retain these records.
- FNS recommends that the State agency include appropriate language in their memorandums of understanding or contractual agreements to ensure the third-party is in compliance with program requirements.

Commenters also requested various clarifications as to the filing date. These include requests to require the automatic recording of the date for applications filed electronically, that the filing date should be the day received by the office during business hours, to allow States to use a statewide definition of receipt of applications, and to allow applications for pre-released institutionalized applicants to be the actual date submitted (not when released). FNS finds that existing program requirements in the regulations and policy memos provide sufficient guidance on these matters.

One commenter spoke to the proposed criteria for effective safeguards against impersonation, identity theft and invasions of privacy for telephonic signature systems, and requested more information on the nature of these safeguards and how states might implement them. As discussed further below, FNS expects States to develop a telephonic signature process that includes necessary safeguards against impersonation, identity theft, and invasions of privacy, as is required by the Act. States have discretion to determine those safeguards and implement them effectively.

*What did commenters say about the optional nature of unwritten signatures?*

Four commenters disagreed with the Department's proposal at § 273.2(c)(7)(iii) that it be optional for States to accept unwritten signatures, arguing that States should be required to accept unwritten signatures unless an alternative exists that provides comparable access to program for people with disabilities.

Relatedly, one commenter stressed that the Department should emphasize that handwritten signatures should always be counted as a signature. The Department agrees. Handwritten signatures transmitted electronically must still be considered a signature for program purposes. For example, signatures received by facsimile are not unwritten signatures.

Section 11(e) of the Act allows telephonic signatures as an option, not a requirement. As stated in the preamble to the proposed rule, the Department has consistently recommended that State agencies consult legal counsel to verify that verbal assent constitutes a valid signature pursuant to State law. Following the statutory option for telephonic signatures, the Department also proposed to give States the option to accept or not accept other types of unwritten signatures, such as gestured or electronic signatures. We also note that for those States choosing not to take

the option, unwritten or alternative signatures may still be required for some applicants with disabilities as a reasonable accommodation under Section 504 of the Rehabilitation Act or in compliance with other civil rights laws. These unwritten or alternative signatures that are not part of a formal State option must still meet the requirements of the final rule. For these reasons, the Department will adopt the provision proposed at § 273.2(c)(7)(iii) without change except for a revision to remove the reference including faxed signatures as unwritten signatures at 273.2(c)(7)(iii)(A), and to add clarifying language regarding compliance with civil rights laws.

*What did commenters say about giving households 10 days to review and correct non-paper applications?*

A total of 13 commenters, including advocates, State agencies, and related associations, opposed the 10-day review period for non-paper applications (*i.e.*, electronically submitted applications and applications with telephonic or gestured signatures). One State agency commented that the 10-day review period makes no sense for online applications, and stated that a regulation already exists for handling changes between application filing and certification. Another State agency objected to extending the opportunity to review and change information on a signed application for households who complete the application themselves, such as an online application that the households signs electronically and submits, and that for applications submitted by households (either electronic or paper), the interview is the point when information on the application can be corrected or clarified. This commenter recommended that the Department keep the post-signature review opportunity only for households that are signing by voice or gesture, and allow State agencies to determine the process by which these households will be able to review and provide corrections to their applications.

Sixty-two commenters requested clarification on the 10-day review period, stressing that the application process must not be delayed during the time period and that all applications must meet normal/expedited processing times. Most of these commenters said failure to return the form should not result in an intentional program violation (IPV), other sanctions or termination. Four commenters asked for clarification that one signature is sufficient.

*Does the final rule keep the 10-day review period?*

No. The Department finds commenters' objections to the proposed 10-day review period persuasive. The Department agrees that the 10-day review proposal would have caused unnecessary action and delay, both for State agencies and applicants. Accordingly, we have dropped proposed language at §§ 273.2(c)(1)(v)(A), 273.2(c)(7)(vii)(D), 273.2(c)(7)(viii)(D), and 273.2(c)(7)(ix)(D).

*What types of applications retain the post-signature review and correction process?*

The final rule retains the post-signature review and correction process for applications with telephonic or gestured signatures. It is statutorily required for applications with telephonic signatures per Section 11(e)(2)(C)(iii)(IV) of the Act, and the Department continues to believe that this process is also appropriate for applications with gestured signatures because these applications are anticipated to be completed initially by a SNAP eligibility worker who will record information provided by the household during an interactive interview. The Department agrees that a post-signature review and correction process is unnecessary for households that have independently entered information on the application and submitted an electronically-signed application. Accordingly, this language is removed from §§ 273.2(c)(1)(v)(A) and 273.2(c)(7)(vii)(D) is removed entirely.

In response to other commenter requests for clarification, the Department wishes to clarify that the application process must not be delayed as a result of the State procedure for household review and correction of information on applications, and that all applications must meet normal/expedited processing times. In addition, only one signature is necessary to be considered a complete application, provided that the signature is provided in a form that is accepted by the State agency. Finally, the household's failure to return the copy of the application or the summarized information used by the State agency to determine eligibility and benefit levels must not result in an IPV, other sanction, or termination.

Additionally, the Department is making technical corrections to this section. First, the Department is removing several references in this section to "paper or electronic" and combining all references to the filing date of the application in

§ 273.2(c)(1)(iv). Next, the Department has reorganized sections § 273.2(e)(2)(i) and § 273.2(e)(2)(ii) and added § 273.2(e)(2)(iii) and § 273.2(e)(2)(iv). The paragraphs have been renumbered accordingly.

*What did commenters say about the availability of paper applications?*

Eight commenters agreed with the Department's proposal that paper application forms must always be available and that States must not interfere with a household's right to file a written application. These commenters further stated that States should affirmatively encourage the filing of paper applications and that the regulations should prohibit States from suggesting to households disadvantages of filing a paper application. The Department understands the concern of commenters that certain low-income populations, such as the elderly, those with a disability and individuals with limited English proficiency, may be discouraged from applying for benefits as States move to an increasingly electronic environment for applying for SNAP benefits, but the Department also believes that the proposed rule language strongly supports household access to paper application and the right to apply in writing. Accordingly, the final rule retains the language proposed at § 273.2(c)(1)(ii) and 273.2(c)(3)(ii).

The Department notes a clarification in this final rule at § 273.2(c)(3) that, when filing an application, an applicant must be able to file the application with only a name, address and signature. The existing language had suggested that the process begins with name, address and signature. Technological advances have led to more States using methods other than traditional paper applications for SNAP. We want to emphasize that, regardless of the method used, an applicant's filing date is preserved when name, address and signature is received by the State agency and that all State application procedures—including, but not limited to, paper, online, and telephone processes—must afford applicants the ability to submit an application with just these elements and must make it readily apparent to applicants that this option is available to them. The Department believes it is important to make clear, consistent with longstanding policy, that once a household submits an application with name, address and signature, that application is filed as of the date it is received by the State agency.

*Which applicants should receive a copy of their non-paper application?*

The Department proposed at § 273.2(b)(1) and § 273.2(c)(1)(v)(B) to require State agencies to provide households with a paper copy of a non-paper application. This is an extension of the current provision at § 273.2(c)(1), which requires that State agencies must provide applicants with a copy of their applications filed on-line at the SNAP local office. Three State agencies disagreed with the proposed extension of the application copy requirement. However, 64 commenters approved of the Department's proposal and recommended that States be required to provide households with a copy of their filed applications, whether paper or non-paper. Commenters also requested clarification on what is meant by "completed application". A large number of commenters (65) suggested that in lieu of sending the actual completed application, it would be acceptable for the State agency to send the household a list of information provided by the client and recorded by the State agency.

Commenters also expressed some confusion about the timing of receipt of the completed application. Some commenters suggested that, in addition to the post-signature review and correction process, State agencies should also provide a copy of the information that the State agency used to determine eligibility and benefits. This second copy of the "completed application" would be sent with the notice of eligibility or denial.

Since the 2008 publication of the proposed rule, the Department has learned from multiple State agencies that the previously existing requirement to give households a copy of a completed application filed on-line at SNAP local office has resulted in a significant waste of paper because applicants often leave those copies, which include confidential personal information, at the local office. In response to these concerns, the Department has approved a waiver since 2011 to allow the State agency to offer households a copy of an application completed on-line at the local office. Under this waiver, the local office is obligated to provide a paper copy of an application only if the applicant indicates a desire to receive it after it is offered to them. Currently, almost one third of the State agencies are approved to operate this waiver.

In the proposed rule, the Department intended that the copy of the completed application would be part of the post-signature review and correction process

that had been proposed for all non-paper applications. In order to ensure that all applicants have an opportunity to review the information submitted in their application for benefits, and based on the comments received, in the final rule the Department requires State agencies to offer all households a copy of the completed application. At the option of the household, the copy of the completed application may be in electronic form. The State agency will have the discretion to determine the most efficient means to offer this option, for example, by adding a question on the application as to the applicant's preference. This procedure will make the need for the above-mentioned waiver obsolete.

In view of the above considerations, the Department will not adopt the proposed provisions at § 273.2(b)(1)(x) and § 273.2(c)(1)(v)(B) to require State agencies to provide households a copy of completed non-paper applications. Instead, the Department is revising and redesignating the regulations at § 273.2(c)(1)(v) to require that State agencies must offer to provide copies of all applications completed by households regardless of the method by which the applicant submitted the application. The regulation will also specify that the household will have the option to receive the copy of their completed application in electronic format. Because State agencies may have logistical updates to their application process to implement this provision, State agencies will have one year from the date this rule is published to implement this requirement.

The Department is also clarifying that State agencies opting to accept telephonic or gestured signatures may determine the form of the completed application that is sent to these households. As stated in the preamble to the proposed rule, the State agency need not provide a transcript of the recorded application, but it must include the information that the State agency will use to determine eligibility and benefits. Thus, a completed application may be a list of information provided by the household or an exact copy of the application submitted. States will have the flexibility to provide information to households in a way most efficient for them. As with other information forwarded to households by State agencies, State agencies must be in compliance with all Federal laws regarding accessibility for people with disabilities. Since utilizing telephonic or gestured signatures is optional, the Department believes that State agencies taking this option are in the best position to determine the form

of the completed application that is sent to households. The Department anticipates that information will likely be digitized, and that it will likely not be that difficult to generate the information in a format understandable to the household.

*What did commenters say about the proposal to allow telephonic and gestured signatures for periodic reports?*

Most commenters (63 out of 66) who addressed this issue opposed this proposal, and several indicated a desire for the removal of the signature requirement on periodic reports. Their opposition reflects a misunderstanding, however, about the current requirements for periodic reports. The signature requirement for periodic reports is not a new requirement. As stated in the preamble to the proposed rule, the periodic report is similar to an application in that it includes a household's statement of its circumstances. The signature requirement for periodic reports is found in current regulations at § 273.12(b)(2)(vii) for quarterly and simplified reporting systems, and at § 273.21(h)(2)(vi) for monthly periodic reports. The household's signature on the periodic reports acknowledges an understanding that the information provided in the report may result in the termination or reduction of benefits. The proposed revisions to these paragraphs simply extended to State agencies the option to allow households filing periodic reports to provide a telephonic or gestured signature if the State has opted to accept these types of signatures. This final rule retains these proposed revisions. That is, State agencies electing to use telephonic or gestured signatures may also allow the use of these signatures for periodic reports.

*How do States safeguard signature systems?*

Five commenters, including three State agencies, requested guidance on how States can safeguard all signature systems against impersonation, identity theft and invasions of privacy. States must ensure privacy is maintained according to current requirements. As stated in the preamble to the proposed rule, the Department does not think that this requirement will be a significant burden to State agencies. State agencies already protect households' privacy by following the regulations on the confidentiality of households' records, per § 272.1(c), and by prudent administrative practices. If the Department obtains or develops any more information on technical or other

means of compliance, we will issue guidance outside of the rulemaking process.

*Will the Department add additional language regarding compliance with civil rights laws?*

Five commenters stated that application processing regulations should be in compliance with legislation protecting people with disabilities, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). Existing regulations already require such compliance. Nondiscrimination regulations exist at 7 CFR 272.6, and prohibit discrimination against applicants in any aspect of program administration in accordance with those laws. Regulations requiring compliance with Section 504 of the Rehabilitation Act exist at current § 273.2(c)(3) and at proposed § 273.2(c)(3)(i). Also, regulations require that State agencies provide applications in other languages as required in § 272.4(b).

**14. Employment and Training (E&T): Funding Cycle § 273.7(d)(3)(ix)**

*How did the FCEA change the E&T funding cycle?*

Section 4122 of the FCEA amended Section 16(h)(1)(A) of the Act (7 U.S.C. 2025(h)(a)(A)) to place a 15-month limit on the availability of unobligated, unexpended E&T funds. The Department proposed to implement Section 4122 of FCEA by removing the reference in § 273.7(d)(3)(ix) stating that funds allocated in accordance with paragraph § 273.7(d)(1) will remain available until obligated or expended. The Department received two comments on this provision. These comments did not address the rule itself, but asked for guidance and technical assistance on the availability of additional E&T funds. The Agricultural Act of 2014 (Pub. L. 113–79) changed the E&T funding cycle to a two-year period. The Department has already issued subsequent guidance on this issue. Because the Agricultural Act of 2014 superseded the provision contained in the proposed rule, the Department is not adopting this provision as proposed.

*Will the Department remind State agencies of available E&T funds?*

Yes. Commenters suggested that the Department remind State agencies of the status of unobligated, unexpended funds. The Department currently informs State agencies of available funds and will continue to do so. State agencies may request additional 100 percent Federal funds at any time

provided that the State agency can amend its E&T plan and obligate additional funds before the end of the Federal fiscal year.

*Will the Department provide technical assistance to States on how to request, plan and manage E&T funds?*

The Department received one comment recommending that the Department offer technical assistance in planning and managing E&T funds. The Department appreciates this suggestion and will take it into consideration when developing future guidance and designing E&T tools.

**15. Telephone Interviews at Initial Certification and Recertification §§ 273.2(e)(2) and 273.14(b)(3)**

*What is the current requirement concerning interviews at initial application and recertification?*

Current regulations at § 273.2(e)(1) require a face-to-face interview at initial application and at least every 12 months after that, except for certain households certified for more than 12 months. Under § 273.2(e)(2), the State agency may waive the face-to-face interview and hold a telephone interview if requested by the household based on a hardship such as disability, inadequate transportation or an employment conflict. If the State agency waives the face-to-face interview based on such a household hardship, it must document the waiver in the household's case file. Under § 273.14(b)(3), State agencies must meet the same interview requirements for households at recertification, including a face-to-face interview, and may also waive the face-to-face interview for hardship reasons as provided in § 273.2(e).

*How did the Department propose to change the regulations regarding face-to-face interviews?*

The Department proposed to amend §§ 273.2(e)(2) and 273.14(b)(3) to allow State agencies to use a telephone interview rather than a face-to-face interview without the need for the State to ascertain hardship. State agencies would be required to provide a face-to-face interview if requested by the household or if the State agency determines that one is necessary. However, if a household that meets the State agency's hardship criteria requests to waive the in-office interview, the State agency would be required to conduct the interview by telephone or a home visit. The proposal incorporated policy issued by the Department in a June 25, 2009, memorandum, which can be found on the FNS Web site at: <http://>

*origin.www.fns.usda.gov/snap/rules/Memo/2009/062509.pdf.* The

Department also proposed to require that State agencies that opt to provide telephone interviews in lieu of face-to-face interviews must specify this in their State plan of operation and describe the type of households that will be routinely offered a telephone interview.

*Did commenters support the proposed change?*

Forty-five commenters supported the proposal to make the telephone interview an option under the regulations. Seventy-one commenters suggested updating the regulatory language to remove reference to “waivers”, ensure that clients retain the right to have a face-to-face interview, and ensure clients continue to have the right to request a telephone interview due to hardship.

*Did the Department modify the provisions of the proposed rules?*

Language requiring that households have a face-to-face interview if requested will be retained in the final rule. However, in § 273.2(e)(2), the final rule has been modified from the proposed based upon suggestions made by commenters. The final rule has been modified to: remove references to waivers; clarify requirements for providing face-to-face interviews and that such interviews can be conducted at an applicant’s residence; and reiterate that State agencies must provide Limited English Proficient (LEP) households with bilingual personnel during the interview (as already required under § 272.4(b)).

Nine commenters took this opportunity to emphasize their strong support of the SNAP interview, and they requested that clear interview priorities in terms of client rights be established for interviews. They suggested the regulations on interviews be revised to indicate that the face-to-face interview and in-person assistance is the preferred approach for conducting interviews, with the second preferred approach being State agency or client requested telephone interviews, and the last preferred approach being home interviews agreed upon by agency and client. Interestingly, 53 other commenters suggested reducing the requirement for interviews where other methods of contact suffice and the client’s benefits will be approved or continued as a result of approved waivers.

Commenters also suggested requiring State agencies to provide households with a toll-free number where

households can call for an interview when a scheduled interview did not occur, that State agencies encourage households that missed an interview to reschedule the interview before denying the household for a missed interview, and to permit wider use of interactive voice response system interviews and allow more States to test certification of certain types of households without interview. One commenter disagreed with the automated interview suggestion.

The Department appreciates the unique benefits that accrue to households and program integrity as a result of required interviews. The Department agrees that the interview is a fundamental aspect to this program, and does not intend to eliminate the interview. Therefore, the final regulatory text incorporates the requirement that State agencies must inform each applicant of the opportunity for a face-to-face interview at the time of application and recertification and grant a face-to-face interview to any household that requests one at any time, even if the State chooses the option to make telephone interviews generally available. The final rule also makes clear that if a State does not adopt the option to make telephone interviews generally available, it must provide for such an interview for individuals who meet the hardship criteria, at the household’s option. Also, the State agency may provide a home-based interview only if the household meets the hardship criteria and requests one. However, the Department does not believe it is prudent to establish preferred interview methods in the regulations. The Department believes that State agencies should have flexibility to determine the preferred approach for conducting interviews.

Again, the Department emphasizes that State agencies must provide a face-to-face interview if requested by the household or its authorized representative at initial application or recertification; that is, any time during the application process. To ensure consistency and fairness across the caseload, State agencies must establish reasonable standards for which households will be offered a telephone interview. State agencies must also ensure that all households meeting the hardship criteria are offered a telephone interview. Again, the State agency may provide a home-based interview only if a household meets the hardship criteria and requests a home-based interview. The Department will continue to work with State agencies that request waivers of certain aspects of interviews to

improve efficiency while preserving client rights and access to the program.

*Are telephone interviews compliant with civil rights laws?*

Sixty-three commenters requested clarification that telephone interviews, if used, must be available to all types of households, not only those with limited English proficiency and people with disabilities. SNAP regulations at § 272.6 prohibit discrimination against any applicant or participant in any aspect of SNAP administration, including, but not limited to the certification of households, the issuance of coupons, the conduct of fair hearings or the conduct of any other program service for reasons of age, race, color, sex, disability, religious creed, national origin, or political beliefs. On May 12, 2011, the Department published its final rule, “Civil Rights Protections for SNAP Households”, which implements the provisions of Section 11(c) of the Act, as amended by Section 4117 of the FCEA. In this final rule, the Department amended § 272.6(a) to specifically provide that State agency administration of the program must be consistent with the ADA. The Department also made a change in terminology to update the reference to “handicap” to “disability” in § 272.6 in conformance with the ADA.

In addition, 50 commenters requested assurance that households needing extra assistance in completing the interview process get it. The Department agrees that this is a reasonable expectation for individuals applying for SNAP benefits. However, this issue involves the customer service aspect of the interview process, as opposed to the straightforward goal of eliminating the need for a waiver of the regulations to conduct telephonic interviews. The efficiency and effectiveness of the waiver has already been long-established, and the Department requires that State agencies provide households with assistance in the interview process by requiring State agencies to provide an in-person interview whenever requested. For these reasons, the Department will not revise regulatory language to adopt this suggestion. Nevertheless, it is important to note that the Department examines customer service issues at the State and local offices as part of the Management Evaluation (ME) process, as well as other reviews that target program access requirements. Further, the Department conducts civil rights reviews and examines the State agency complaint system, which is required in § 272.6(d). State agencies are required to develop and implement corrective action to

address deficiencies identified during ME, program access, and civil rights reviews.

16. Averaging student work hours, § 273.5(b)

*What does the law require for student work hours?*

Under Section 6(e) of the Act (7 U.S.C. 2015(e)) and § 273.5(b), students enrolled at least half-time in an institution of higher education are ineligible to participate in SNAP unless they meet at least one of several criteria. One criterion allows students to participate if they are employed for a minimum of 20 hours a week. Section 6(e)(4) of the Act describes the student work requirement and provides that a student may be eligible for SNAP if he or she “is employed a minimum of 20 hours per week . . . during the regular school year.” Since there is no methodology for applying this rule in the Act, the Department interpreted the provision as requiring full-time college students to work a minimum of 20 hours every week to be eligible for SNAP.

*How did the Department propose to change the work requirement?*

The Department proposed to amend § 273.5(b)(5) to give State agencies the option, without needing to request a waiver, to determine compliance with the 20-hour minimum work requirement by averaging the number of hours worked over the month, using an 80-hour monthly minimum.

*Did commenters support the proposed provision?*

Yes. Sixty commenters, including advocates, food banks and associations, supported the proposal to average student work hours as an option in the regulation. Most of these commenters also suggested that States be permitted to average work hours over a longer period of time to reflect the variable nature of student work schedules, such as a quarter, semester or trimester.

The Department agrees that the option suggested by commenters has merit for students and State agencies, and is adding this option to revised § 273.5(b)(5) in this final rule. The final rule language specifies that work hours performed during academic breaks greater than one month must not be averaged with other months. The Department believes that this will enable students to manage their employment and school workloads efficiently while still requiring students receiving SNAP to work while in school.

In addition to the revision noted above, the Department has eliminated the 80-hour per month language from the proposed rule in the final rule. This language is contained in the Act for work requirements for able-bodied adults without dependents, but it does not appear in the Act with regard to student hours.

Accordingly, the Department will adopt the proposed revision to § 273.5(b)(5) with modifications for the reasons noted above.

## II. Procedural Matters

### *Executive Orders 12866 and 13563*

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an “economically” significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB). Consistent with the requirements of Executive Orders 12866 and 13563, a Regulatory Impact Analysis (RIA) was developed for this final rule. The RIA is included in the docket for this rule at [www.regulations.gov](http://www.regulations.gov). The docket number is FNS–2011–0008. A summary of the analysis follows:

### *Regulatory Impact Analysis*

The provisions in this final rule are intended to increase SNAP benefit levels for certain participants, reduce barriers to participation and promote efficiency in the administration of the program. The Department has estimated the total SNAP costs to the Government of the FCEA statutory provisions implemented in this rule as \$831 million in fiscal year (FY) 2010 and \$5.619 billion over the 5 years FY 2010 through FY 2014. The changes to the rule provisions between the proposed rule and the final rule do not have any significant impacts on the cost estimates. As many of the provisions are self-implementing upon the date

specified in FCEA, the impacts are already fully incorporated into the President’s budget baseline. In addition to the SNAP costs discussed above, the provisions of this rule also result in a major reduction in reporting burden for SNAP clients. We estimate that this reduction in burden yields an overall annual cost savings of \$286 million.

*Statement of Need:* This final rulemaking is necessary to amend SNAP regulations to implement provisions of the FCEA that establish new eligibility and certification requirements for the receipt of SNAP benefits. These provisions are intended to increase SNAP benefit levels for certain participants, reduce barriers to participation, and promote efficiency in the administration of the program.

*Benefits:* As noted above, provisions of this rule increase SNAP benefits for certain households and reduce participant burden by streamlining program administration.

*Costs:* As noted above, we estimate that the provisions contained in this rule will reduce household-level burden by over 40 million hours, resulting in an annualized cost savings of approximately \$286 million.

*Transfers:* As noted above, the Department has estimated the total SNAP costs to the Federal Government at \$831 million in FY 2010 and \$5.619 billion over the 5 years FY 2010 through FY 2014.

### *Executive Order 13175*

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has conducted a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions took place in the months of October, November and December of 2010 and January 2011 at locations around the country. These sessions established a baseline of consultation for future actions regarding this rule. Reports from these sessions for consultation were included in the USDA annual reporting on Tribal Consultation and Collaboration. No

comments were received on this specific rule during these consultations. The policies contained in this rule would not have Tribal implications that preempt Tribal law. USDA will offer future opportunities, such as webinars and teleconferences, for collaborative conversations with Tribal leaders and their representatives concerning ways to improve rules with regard to their effect on Indian country.

We are unaware of any current Tribal laws that could be in conflict with the final rule. However, should a Tribe request consultation, the Food and Nutrition Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on small entities. Pursuant to that review, the Administrator certifies that this final rule does not have a significant impact on small entities.

State and local human service agencies will be the most affected to the extent that they administer SNAP. The provisions of this final rule, affecting the eligibility, benefits, certification and employment and training requirements for applicant or participant households in SNAP, are implemented through State agencies, which are not small entities as defined by the Regulatory Flexibility Act. In addition, the majority of this rule's provisions were implemented as required by the FCEA on October 1, 2008. This rule amends the SNAP regulations to be consistent with the requirements of the FCEA.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 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, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$146 million or more (when adjusted for 2015 inflation; GDP deflator source: Table 1.1.9 at <http://www.bea.gov/iTable>) in any one year. This rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) that impose costs on State, local, or Tribal governments or to the private sector of \$146 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

#### *Executive Order 12372*

SNAP 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), the Program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### *Federalism Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of the Executive Order 13132.

#### *Prior Consultation With State Officials*

After the FCEA was enacted on June 18, 2008, FNS held a series of conference calls with State agencies and FNS regional offices to explain the SNAP provisions included in the public law and to answer questions that State agencies had about implementing the changes to the program. On July 3, 2008, FNS issued an implementation memorandum that described each SNAP-related provision in the FCEA and provided basic information to assist State agencies in meeting statutorily-mandated implementation timeframes. FNS responded to additional questions that State agencies submitted and posted the answers on the FNS Web site. Another forum for consultation with State officials on implementation of the FCEA provisions included various conferences hosted by FNS regional offices, State agency professional organizations, and program advocacy organizations. During these conferences, held in the latter part of 2008 and early months of 2009, FNS officials responded to a range of questions posed by State agency officials related to implementation of FCEA provisions.

#### *Nature of Concerns and the Need To Issue This Rule*

This rule implements changes required by the FCEA. State agencies were generally interested in

understanding the timeframes for implementing the various provisions and the implications of the statutory provisions on State agency administration workload and on applicants and participants. FNS was able to answer questions that directly related to the mandatory or optional nature of the provisions and to confirm the statutorily-mandated timeframes for implementation. FNS was also able to respond to questions that involved current regulations or written policy. An example of such an issue was whether uncapped dependent care claimed by an applicant or participant must be verified. FNS was able to answer this question by drawing on current policy at § 273.2(f), which requires that dependent care expenses, like other household costs, must only be verified if questionable or if the State agency opts to require verification of such costs. However, State agencies raised a number of questions that required policy development and could not be answered without promulgation of a new rulemaking. These types of questions raised by State agencies or program advocacy organizations contributed directly to the development of policy in this rule. For example, State agencies asked whether transportation costs associated with getting a dependent to and from care could be counted as part of dependent care expenses and thus be deducted. In this rulemaking, we have clarified specific SNAP policy on this issue that had not been sufficiently developed prior to this rule.

#### *Extent to Which We Met Those Concerns*

FNS has considered the impact of the final rule on State and local agencies. This rule makes changes that are required by law. Most provisions in this rule implement provisions of the FCEA, which were effective on October 1, 2008. Two additional provisions are discretionary in nature and give State agencies regulatory options that currently may only be waived through SNAP's administrative waiver request procedures, which are outlined in § 272.3(c) of this chapter.

#### *Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that 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 rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In SNAP, the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to Section 11(e) of the Act (7 U.S.C. 2020(e)(1)) and regulations at § 273.15; (2) for State agencies—administrative procedures issued pursuant to Section 14 of the Act (7 U.S.C. 2023) and regulations at § 276.7 (for rules related to non-Quality Control liabilities) or Part 283 (for rules related to Quality Control liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the Act (7 U.S.C. 2023) and 7 CFR 279.

*Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the rule might have on minorities, women and persons with disabilities. After a careful review of the rule’s intent and provisions, and of the characteristics of SNAP households and individual participants, we have determined that this rule would not have a disproportionate impact on any of these groups. We have no discretion in implementing many of these changes. The changes that are required to be implemented by law have already been implemented as of October

1, 2008. FNS expects that the discretionary provisions included in this final rule will benefit applicants and participants that are among the protected classes of individuals. All data available to FNS indicate that protected individuals have the same opportunity to participate in SNAP 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, sex, religion, age, disability, marital or family status (SNAP’s nondiscrimination policy can be found at § 272.6(a)). 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 § 272.6.

*Paperwork Reduction Act*

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The proposed rule outlined the provisions of this rule that will affect reporting and recordkeeping requirements and the associated information collection burden maintained approved collections OMB No. 0584–0064 and 0584–0083. Of the provisions in this rule that have been

amended in response to public comments, none of these amendments revise the proposed reporting and recordkeeping requirements. Thus, the reporting and recordkeeping requirements will be adopted as final. Section 271.8, Information collection/recordkeeping—OMB assigned control numbers, is revised accordingly.

Since the publication of the proposed rule, the existing information collections in which the PRA burden will be merged have changed. Changes to those collections result in adjustments to the total burden calculation. Due to changes in participation levels and other mathematical corrections<sup>1</sup> to 0584–0064, the adjusted burden estimate for reporting requirements associated with this rule appear in the table below. As indicated in the proposed rule, the estimated burden impact to recordkeeping is zero. Revisions to 0584–0083 since 2010 have not resulted in adjustments associated with this rulemaking and therefore the burden table for 0584–0083 has not been set out below.

The changes in burden that result from the provisions in this final rule are subject to review and approval by OMB. We have indicated in the Notes column of the table below where “no changes” have been made from the proposed rule. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB’s approval.

**Reporting**

Section of regulation	Title	Estimated number of respondents	Reports filed annually per respondent	Total annual responses	Estimated average number of burden hours per response	Estimated total burden hours	Notes
<b>State Agency Level</b>							
Part 273 .....	Change of Program Name.	44.00	1.00	44.00	8.00	352.00	No change.
273.9(c) .....	Exclusion of combat-related pay.	.....	.....	.....	.....	.....	No change.
273.9(d)(1)(iii) .....	Increase of minimum standard deduction.	.....	.....	.....	.....	.....	No change.
§§ 273.9(d)(4) & 273.10(e)(1)(i)(E).	Elimination of cap on dependent care expenses—SA Operation Manual update.	53.00	1.00	53.00	8.00	424.00	No change.
“ .....	Newly certified households w/dependent care.	53.00	9,517.26	504,415.04	0.08	42,034.59	Adjusted for change in participation level.
“ .....	Existing households w/ dependent care.	53.00	12,412.90	657,883.89	0.03	21,929.46	Adjusted for change in participation level.
273.10(e)(2)(ii)(C) .....	Minimum benefit increase.	53.00	1.00	53.00	0.50	26.5	No change.
273.8(b) .....	Asset indexation .....	53.00	16.98	900	0.02	15.03	No change.

<sup>1</sup> The proposed rule estimated small reductions in reporting burden for certain administrative requirements. These reductions were removed as

burden associated with these requirements had not been previously accounted for in the OMB-cleared

information collection. These estimates were small and inconsequential to the net burden impact.

**Reporting**

Section of regulation	Title	Estimated number of respondents	Reports filed annually per respondent	Total annual responses	Estimated average number of burden hours per response	Estimated total burden hours	Notes
273.8(e)(2)(i) .....	Exclusion of retirement accounts from resources.	.....	.....	.....	.....	.....	
" .....	Newly certified households.	.....	.....	.....	.....	.....	Burden removed due to duplication with total application burden.
" .....	New and Existing households.	.....	.....	.....	.....	.....	Burden reduction removed. Due to mathematical correction.
273.8(e) .....	Exclusion of education accounts from resources.	.....	.....	.....	.....	.....	
" .....	Newly certified households.	.....	.....	.....	.....	.....	Burden removed due to duplication with total application burden.
" .....	New households (existing households not included, already captured in respondents under retirement accounts provision).	.....	.....	.....	.....	.....	Burden reduction removed. Due to mathematical correction.
§§ 273.12(a)(5), (b), and (c).	Expansion of simplified reporting.	.....	.....	.....	.....	.....	
" .....	Newly added elderly or disabled households.	47.00	53,000.00	2,491,000	0.18	457,596.70	No change.
§ 272.2(d)(1)(H) and 273 Subpart H.	Transitional benefits alternative.	.....	.....	.....	.....	0.00	No change.
§§ 273.2(b) & (c), 273.12(c) and (d), 273.14(b), and 273.21(h).	Telephonic signature ....	3.00	1.00	3	120.00	360.00	No change.
§§ 273.2(e)(2) & 273.14(b)(3).	Telephonic interviews ...	40.00	1.00	40.00	2.00	(80.00)	No change.
273.5(b)(5) .....	Averaging student work hours.	.....	.....	.....	.....	.....	Burden reduction removed. Due to mathematical correction.
§§ 273.7(e)(1)(viii) & 273.7(e)(4)(iii).	Employment and Training: Job retention services.	.....	.....	.....	.....	.....	No change.
<b>State Agency Burden Total</b>		<b>53</b>		<b>3,654,392</b>		<b>522,658</b>	

**Household Level**

Part 273 .....	Change of Program Name.	.....	.....	.....	.....	.....	No change.
273.9(c) .....	Exclusion of combat-related pay.	.....	.....	.....	.....	.....	No change.
273.9(d)(1)(iii) .....	Increase of minimum standard deduction.	.....	.....	.....	.....	.....	No change.
§§ 273.9(d)(4) & 273.10(e)(1)(i)(E).	Elimination of cap on dependent care expenses.	.....	.....	.....	.....	.....	
" .....	Newly certified households w/dependent care.	504,415.04	1.00	504,415.04	0.08	42,118.66	Adjusted for change in participation level.
" .....	Existing households w/ dependent care.	657,884	1.00	657,883.89	0.03	21,973.32	Adjusted for change in participation level.
273.10(e)(2)(ii)(C) .....	Minimum benefit increase.	.....	.....	.....	.....	.....	No change.
273.8(b) .....	Asset indexation .....	.....	.....	.....	.....	.....	No change.
273.8(e)(2)(i) .....	Exclusion of retirement accounts from resources.	.....	.....	.....	.....	.....	
" .....	New and existing households.	.....	.....	.....	.....	.....	Burden reduction removed. Due to mathematical correction.
273.8(e) .....	Exclusion of education accounts from resources.	.....	.....	.....	.....	.....	
" .....	New households (existing households not included, already captured in respondents under retirement accounts provision).	.....	.....	.....	.....	.....	Burden reduction removed. Due to mathematical correction.
§§ 273.12(a)(5), (b), and (c).	Expansion of simplified reporting.	2,491,000	1	2,491,000.00	0.0835	207,998.50	No change.



7 CFR section where requirements are described	Current OMB control No.
273.24(f) .....	0584-0479
274.3(d) .....	0584-0069
	0584-0080
274.4(a) .....	0584-0080
274.4(b) .....	0584-0080
	0584-0081
274.6(a), (b) and (e) .....	0584-0080
	0584-0081
275.2(a) .....	0584-0010
	0584-0303
275.4(a) .....	0584-0010
	0584-0303
275.4(b) .....	0584-0010
275.4(c) .....	0584-0034
	0584-0074
	0584-0299
275.5(a), (b) .....	0584-0010
275.6(b) .....	0584-0010
275.8(a) .....	0584-0010
275.9(b), (g) .....	0584-0010
275.10(a) .....	0584-0074
	0584-0299
	0584-0303
275.11(a) .....	0584-0303
275.12(b), (c), (d), (e) .....	0584-0074
275.12(f), (g) .....	0584-0299
275.13(b), (d), (e) .....	0584-0034
275.14(c), (d) .....	0584-0034
	0584-0074
	0584-0299
275.16(b), (c), (d) .....	0584-0010
275.17(a), (b) .....	0584-0010
275.18(a), (b) .....	0584-0010
275.19(a), (b), (c) .....	0584-0010
275.20(a) .....	0584-0010
275.21(b) .....	0584-0034
	0584-0074
	0584-0299
275.21(c), (d), (e) .....	0584-0034
275.22(a), (b) .....	0584-0010
275.23 .....	0584-0010
	0584-0034
	0584-0074
	0584-0299
277.18(a), (c), (d), (f), (i) .....	0584-0083
278.1(a), (b), (l) .....	0584-0008
278.5(c), (d), (f) .....	0584-0008
278.6(b) .....	0584-0008
278.7(b), (c) .....	0584-0008
278.8(a) .....	0584-0008
280.7(c), (d), (g) .....	0584-0336
280.9(b) .....	0584-0037
280.10(a) .....	0584-0336

**PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES**

■ 5. In § 272.2, revise paragraphs (d)(1)(xvi)(A) through (H) and add paragraphs (d)(1)(xvi)(I) and (J) to read as follows:

**§ 272.2 Plan of operation.**

- \* \* \* \* \*
- (d) \* \* \*
- (1) \* \* \*
- (xvi) \* \* \*

(A) Section 273.2(c)(7)(viii) and 273.2(c)(7)(ix) of this chapter, it must include in the Plan's attachment the option to accept telephonic signatures

and gestured signatures on the application and reapplication forms (other than for households the State may be required to accept such signatures as a reasonable accommodation under Section 504 of the Rehabilitation Act or in compliance with other civil rights laws) and a description of the procedures being pursued under the provision;

(B) Sections 273.2(e)(2) and 273.14(b)(3) of this chapter, it must include in the Plan's attachment the option to provide telephone interviews in lieu of face-to-face interviews at initial application and reapplication for households other than those that meet the hardship criteria and a description of the procedures being pursued under the provision;

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

(D) Section 273.5(b)(5) of this chapter, it must include in the Plan's attachment the option to average student work hours and a description of how student work hours will be calculated;

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

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

(G) Sections 273.9(c)(18) and 273.9(c)(19) of this chapter, it must include in the Plan's attachment a statement of the options selected and a description of the types of payments or the types of income being excluded under the provisions;

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

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

(J) Section 273.26 of this chapter, it must include in the Plan's attachment a statement that transitional SNAP benefits are available and a description of the eligible cash-assistance programs by which households may qualify for transitional benefits; if one of the eligible programs includes a State-funded cash assistance program;

whether household participation in that program runs concurrently, sequentially, or alternatively to TANF; the categories of households eligible for such benefits; the maximum number of months for which transitional benefits will be provided.

\* \* \* \* \*

■ 6. In § 272.3, remove paragraph (c)(5) and redesignate paragraphs (c)(6) and (c)(7) as paragraphs (c)(5) and (c)(6), respectively, and revise redesignated paragraphs (c)(5) and (c)(6). The revisions read as follows:

**§ 272.3 Operating guidelines and forms.**

\* \* \* \* \*

(c) \* \* \*

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

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

■ 7. In § 272.13, revise paragraph (b)(4) to read as follows:

**§ 272.13 Prisoner verification system (PVS).**

\* \* \* \* \*

(b) \* \* \*

(4) Notice to the household of match results. The State must use the procedures laid forth in § 273.12(c)(3)(iii) of this chapter;

\* \* \* \* \*

■ 8. In § 272.14, revise paragraph (c)(4) to read as follows:

**§ 272.14 Deceased matching system.**

\* \* \* \* \*

(c) \* \* \*

(4) Notice to the household of match results. The State must use the procedures laid forth in § 273.12(c)(3)(iii) of this chapter;

\* \* \* \* \*

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

■ 9. In part 273, remove the words "food coupons" wherever they appear and add in their place the words "SNAP benefits."

■ 10. Effective March 7, 2017, in § 273.2:

- a. Revise paragraph (b)(1);
- b. Revise paragraphs (c)(1) and (c)(3);

- c. Add new paragraph (c)(7);
- d. Revise paragraph (e)(2);
- e. Revise the first and last sentences of paragraph (i)(3)(i);
- f. Revise paragraph (i)(3)(ii);
- g. Revise the last sentence of paragraph (k)(1)(i)(O);
- h. Amend the first sentence of paragraph (n)(4)(i)(C) by removing the word “coupons” and adding in its place the word “benefits”;
- i. Amend paragraph (n)(4)(iii) by removing the words “authorization documents or coupons” and adding in its place the words “EBT accounts”; and
- j. Remove references to “§ 273.1(e)(2)” wherever they appear and add in their place “§ 273.11(i)”.

The additions and revisions read as follows:

**§ 273.2 Office operations and application processing.**

\* \* \* \* \*

(b)(1) A State agency may consider an application form to be a paper document, on-line document or a recorded conversation. Each application form shall contain:

\* \* \* \* \*

(c) \* \* \*

(1) *Household’s right to file*—(i) *Where to file.* Households must file SNAP applications by submitting the forms to the SNAP office either in person, through an authorized representative, by mail, by completing an on-line electronic application, or, if available, by fax, telephone, or other electronic transmission.

(ii) *Right to file in writing.* All households have the right to apply or to re-apply for SNAP in writing. The State agency shall neither deny nor interfere with a household’s right to apply or to re-apply in writing.

(iii) *Right to same-day filing.* Each household has the right to file an application form on the same day it contacts the SNAP office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant’s name and address, and is signed by a responsible member of the household or the household’s authorized representative. Regardless of the type of application system used, the State agency must provide a means for all applicants applying through any mechanism to immediately begin the application process by filing an application with only the name, address and signature.

(iv) *Recording the filing date.* The date of application is the date the application is received by the State

agency. State agencies must document the application date on the application. If the application is received outside normal business hours the State agency will consider the date of application the next business day. For online applications, the date of application is the date the application is submitted, or the next business day if it is submitted after business hours. For telephonic applications, the date of application is the date on which the household member provides verbal assent.

(v) [Reserved]

(vi) *Residents of institutions.* The following special provisions apply to residents of institutions.

(A) *Filing date.* When a resident of an institution is jointly applying for SSI and SNAP benefits prior to leaving the institution, the filing date of the application that the State agency must record is the date of release of the applicant from the institution.

(B) *Processing deadline.* The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the SNAP office designated by the State agency to accept the household’s application, except when a resident of a public institution is jointly applying for SSI and SNAP benefits prior to his/her release from an institution in accordance with § 273.11(i).

(C) *Certification procedures.* Residents of public institutions who apply for SNAP prior to their release from the institution shall be certified in accordance with § 273.2 paragraph (g)(1) or § 273.2(i)(3)(i) of this section, as appropriate.

\* \* \* \* \*

(3) *Availability of the application form.* (i) *General availability.* The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form. Regardless of the type of system the State agency uses, the State agency must provide a means for applicants to immediately file an application that includes only name, address and signature. If the State agency maintains a Web page, it must make the application available on the Web page in each language in which the State agency makes a printed application available. The State agency must provide on the Web page the addresses and phone numbers of all State SNAP offices and a statement that the household should return the application form to its nearest local office. The applications must be accessible to persons with disabilities in accordance with Section 504 of the

Rehabilitation Act of 1973, Public Law 93–112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–516, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101.

(ii) *Paper forms.* The State agency must make paper application forms readily accessible and available even if the State agency also accepts application forms through other means.

\* \* \* \* \*

(7) *Signing an application or reapplication form.* In this paragraph, the word “form” refers to applications and reapplications.

(i) *Requirement for a signature.* A form must be signed to establish a filing date and to determine the State agency’s deadline for acting on the form. The State agency shall not certify a household without a signed form.

(ii) *Right to provide written signature.* All households have the right to sign a SNAP form in writing.

(iii) *Unwritten signatures.* The State agency shall decide whether unwritten signatures are generally acceptable. The State agency may decide to accept unwritten signatures. A State agency that does not select this option must accept unwritten signatures when necessary to comply with civil rights laws.

(A) These may include electronic signature techniques, recorded telephonic signatures, or recorded gestured signatures.

(B) A State agency is not required to obtain a written signature in addition to an unwritten signature.

(iv) *Who may sign the form.*

(A) An adult member of the household.

(B) An authorized representative, as described in paragraph (n)(1) of this section.

(v) *Criteria for all signatures.* All systems for signatures must meet all of the following criteria:

(A) Record for future reference the assent of the household member and the information to which assent was given;

(B) Include effective safeguards against impersonation, identity theft, and invasions of privacy;

(C) Not deny or interfere with the right of the household to apply in writing;

(D) Comply with the SNAP regulations regarding bilingual requirements at § 272.4(b) of this chapter; and

(E) Satisfy all requirements for a signature on an application under all laws and guidance applicable to SNAP, including civil rights laws.

(vi) *Handwritten signatures.* These provisions apply specifically to

handwritten signatures, including handwritten signatures that the household transmits by facsimile or other electronic transmission.

(A) If the signatory cannot sign with a name, an X is a valid signature.

(B) The State agency may require a witness to attest to an X signature.

(C) An employee of the State agency may serve as a witness.

(vii) *Electronic signatures.* These provisions apply specifically to electronic signatures.

(A) The State agency may accept an electronic signature but is not required to do so.

(B) Some examples of electronic signature are the use of a Personal Identification Number (PIN), a computer password, clicking on an "I accept these conditions" button on a screen, or clicking on a "Submit" button on a screen.

(viii) *Telephonic signatures.* These provisions apply specifically to telephonic signatures.

(A) A State agency that chooses to accept telephonic signatures under this paragraph (c)(7)(viii) must specify in its State plan of operation that it has selected this option.

(B) To constitute a valid telephonic signature, the State agency's telephonic signature system must make an audio recording of the household's verbal assent and a summary of the information to which the household assents. An example of a telephonic signature is a recording of "Yes" or "No", "I agree" or "I do not agree", or otherwise clearly indicating agreement or disagreement during an interview over the telephone. An example of a summary of the information to which the household assents is a recording of a reiteration of the household's details agreed to during the telephone conversation.

(C) A telephonic signature system must provide for linkage from the audio file of the recorded verbal assent to the application so that the State agency has ready access to the household's entire case file.

(D) The State agency shall promptly provide to the household member a written copy of the completed application, with instructions for a simple procedure for correcting any errors or omissions.

(ix) *Gestured signatures.* These provisions apply specifically to gestured signatures.

(A) A State agency that chooses to accept gestured signatures under this paragraph (c)(7)(ix) must specify in its State plan of operation that it has selected this option.

(B) Gestured signatures include the use of signs and expressions to communicate "Yes" or "I agree" in American Sign Language (ASL), Manually Coded English (MCE) or another similar language or method during an interview, in person or over a video link.

(C) The State agency shall promptly provide to the household member a written copy of the completed application, with instructions for a simple procedure for correcting any errors or omissions.

\* \* \* \* \*

(e) \* \* \*

(2) The State agency may use a telephone interview instead of the face-to-face interview required in paragraph (e)(1) of this section for all applicant households, for specified categories of households, or on a case-by-case basis because of household hardship situations as determined by the State agency. The hardship conditions must include, but are not limited to, illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours that prevent the household from participating in an in-office interview. If a State agency has not already provided that a telephone interview will be used for a household, and that household meets the State agency's hardship criteria and requests to not have an in-office interview, the State agency must offer to the household to conduct the interview by telephone. The State agency may provide a home-based interview only if a household meets the hardship criteria and requests one. A State agency that chooses to routinely interview households by telephone in lieu of the face-to-face interview must specify this choice in its State plan of operation and describe the types of households that will be routinely offered a telephone interview in lieu of a face-to-face interview. The State agency must grant a face-to-face interview to any household that requests one.

(i) State agencies must inform each applicant of the opportunity for a face-to-face interview at the time of application and recertification and grant a face-to-face interview to any household that requests one at any time, even if the State agency has elected the option to routinely provide telephone interviews.

(ii) Like households participating in face-to-face interviews, households interviewed by any means other than the face-to-face interview are not exempt from verification requirements.

However, the State agency may use special procedures to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where documentary verification would normally be provided.

(iii) The use of non-face-to-face interviews may not affect the length of a household's certification period.

(iv) State agencies must provide Limited English Proficient (LEP) households with bilingual personnel during the interview as required under § 272.4(b) of this chapter.

\* \* \* \* \*

(i) \* \* \*

(3) \* \* \*

(i) \* \* \* For households entitled to expedited service, the State agency shall post benefits to the household's EBT card and make them available to the household not later than the seventh calendar day following the date an application was filed. \* \* \* Whatever systems a State agency uses to ensure meeting this delivery standard shall be designed to provide the household with an EBT card and PIN no later than the seventh calendar day following the day the application was filed.

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall make benefits available to the recipient not later than the 7 calendar days following the date an application was filed.

\* \* \* \* \*

(k) \* \* \*

(1) \* \* \*

(i) \* \* \*

(O) \* \* \* It shall also include the client's rights and responsibilities (including fair hearings, authorized representatives, out-of-office interviews, reporting changes and timely reapplication), information on how and where to obtain an EBT card and PIN and how to use an EBT card and PIN (including the commodities clients may purchase with SNAP benefits).

\* \* \* \* \*

■ 11. Effective January 8, 2018, in § 273.2, add paragraph (c)(1)(v) to read as follows:

**§ 273.2 Office operations and application processing.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) *Application copies.* When a household member completes an

application, the State agency must offer to provide a copy of the completed application. For purposes of this subsection, a copy of the completed application is a copy of the information provided by the client that the State agency has used or will use to determine a household's eligibility and benefit allotment. At the option of the household, the State may provide the copy in an electronic format.

\* \* \* \* \*

■ 12. In § 273.5, revise paragraph (b)(5) to read as follows:

**§ 273.5 Students.**

\* \* \* \* \*

(b) \* \* \*

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours. The State agency may choose to determine compliance with this requirement by calculating whether the student worked an average of 20 hours per week over the period of a month, quarter, trimester or semester. State agencies may choose to exclude hours accrued during academic breaks that do not exceed one month. A State agency that chooses to average student work hours must specify this choice and specify the time period over which the work hours will be averaged in its State plan of operation;

\* \* \* \* \*

■ 13. In § 273.7:

- a. Add paragraph (e)(1)(viii);
- b. Add a sentence to the beginning of paragraph (e)(4)(iii);
- c. Amend the introductory text of paragraph (k)(1) by removing the word "coupon" and adding in its place the word "benefit";
- d. Amend the introductory text of paragraph (k)(4) by removing the word "coupon" and adding in its place the word "benefit";
- e. Amend paragraph (k)(6) by removing the word "coupon" and adding in its place the word "benefit";
- f. Amend the introductory text of paragraph (m)(1) by removing the word "coupon" and adding in its place the word "benefit"; and
- g. Amend paragraph (m)(5)(ii) by removing the word "coupon" and adding in its place the word "benefit".

The addition and revision read as follows:

**§ 273.7 Work provisions.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(viii) Job retention services that are designed to help achieve satisfactory performance, retain employment and to increase earnings over time. The State agency may offer job retention services, such as case management, job coaching, dependent care assistance and transportation assistance, for up to 90 days to an individual who has secured employment. The State agency may determine the start date for job retention services provided that the individual is participating in SNAP in the month of or the month prior to beginning job retention services. The State agency may provide job retention services to households leaving SNAP up to the 90-day limit unless the individual is leaving SNAP due to a disqualification in accordance with 273.7(f) or 273.16. The participant must have secured employment after or while receiving other employment/training services under the E&T program offered by the State agency. There is no limit to the number of times an individual may receive job retention services as long as the individual has re-engaged with E&T prior to obtaining new employment. An otherwise eligible individual who refuses or fails to accept or comply with job retention services offered by the State agency may not be disqualified as specified in paragraph (f)(2) of this section.

\* \* \* \* \*

(4) \* \* \*

(iii) Voluntary participants are not subject to the 120-hour cap on monthly participation.

\* \* \* \* \*

■ 14. In § 273.8:

- a. Revise paragraphs (b), (c)(1), and (e)(2); and
  - b. Add a new paragraph (e)(20).
- The revisions and addition should read as follows:

**§ 273.8 Resource eligibility standards.**

\* \* \* \* \*

(b) *Maximum allowable financial resources.* The maximum allowable liquid and non-liquid financial resources of all members of a household without members who are elderly or have a disability shall not exceed \$2,000, as adjusted for inflation in accordance with paragraph (b)(1) and (b)(2) of this section. For households including one or more member who is elderly or has a disability, such financial resources shall not exceed \$3,000, as adjusted for inflation in accordance with paragraph (b)(1) and (b)(2) of this section.

(1) Beginning October 1, 2008, and each October 1 thereafter, the maximum allowable financial resources shall be

adjusted and rounded down to the nearest \$250 to reflect changes in the Consumer Price Index for the All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor (for the 12-month period ending the preceding June).

(2) Each adjustment shall be based on the unrounded amount for the prior 12-month period.

(c) \* \* \*

(1) Liquid resources, such as cash on hand, money in checking and savings accounts, saving certificates, stocks or bonds, and lump sum payments as specified in § 273.9(c)(8); and

\* \* \* \* \*

(e) \* \* \*

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one funeral agreement per household member. The cash value of pension plans or funds shall be excluded. The following retirement accounts shall be excluded:

(i) Funds in a plan, contract, or account that meets the requirements that is described in one of the following sections of the Internal Revenue Code of 1986:

(A) Section 401(a), which includes funds commonly known as "tax qualified retirement plans," including "401(k) plans";

(B) Section 403(a), which includes funds that are similar to 401(a) plans but are funded through annuity contracts;

(C) Section 403(b), which includes tax-sheltered annuities, custodial accounts, and retirement income accounts retirement plans for some employees of public schools and tax exempt organizations;

(D) Section 408, which includes traditional Individual Retirement Accounts and traditional Individual Retirement Annuities (IRAs);

(E) Section 408A, which includes plans commonly known as "Roth IRAs" (including the "myRA");

(F) Section 457(b), which includes plans commonly known as "eligible deferred compensation plans" for employees of state or local government or tax-exempt entities; or

(G) Section 501(c)(18), which includes plans funded by employee contributions.

(ii) Funds in a Section 529A, which includes funds in a qualified ABLE program.

(iii) Funds in the Federal Thrift Savings Fund within the meaning of that term as used in section 7701(j) of the Internal Revenue Code of 1986, as defined by 5 U.S.C. 8439.

(iv) Any other retirement plan or arrangement that is designated as tax-



exempt under a successor or similar provision of the Internal Revenue Code of 1986.

(iv) Any other retirement account determined by FNS to be appropriate for exclusion.

\* \* \* \* \*

(20) The following education accounts are excluded from allowable financial resources:

(i) Funds in a qualified tuition program, as defined by section 529 of the Internal Revenue Code of 1986; (ii) Funds in a Coverdell education savings account, as defined by section 530 of the Internal Revenue Code of 1986; and

(iii) Funds in any other education savings account determined by FNS to be appropriate for exclusion.

\* \* \* \* \*

■ 15. In § 273.9:

■ a. Amend paragraph (a)(4) by removing the Web site “www.fns.usda.gov/fsp” and adding in its place the Web site “www.fns.usda.gov/snap”;

■ b. Amend the second sentence of paragraph (b)(1)(iii) by removing the words “Job Training Partnership Act” and adding in their place the words “Workforce Investment Act of 1998”;

■ c. Amend the first sentence of paragraph (b)(1)(v) by removing the words “section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act” and adding in their place the words “Title 1 of the Workforce Investment Act of 1998”;

■ d. Amend paragraph (c)(10)(v) by removing the words “Job Training Partnership Act (Pub. L. 90–300)” and adding in their place the words “Workforce Investment Act of 1998”;

■ e. Add new paragraph (c)(20);

■ f. Revise paragraph (d)(1)(iii);

■ g. Amend the second sentence of paragraph (d)(3)(x), by removing the word “coupon” and adding in its place the word “benefit”;

■ h. Revise the last sentence of paragraph (d)(3)(x); and

■ i. Revise paragraph (d)(4).

The addition and revisions read as follows:

§ 273.9 Income and deductions.

\* \* \* \* \*

(c) \* \* \*

(20) Income received by a member of the United States Armed Forces under Chapter 5 of Title 37 of the United States Code that is:

(i) Received in addition to the service member’s basic pay;

(ii) Received as a result of the service member’s deployment to or service in an area designated as a combat zone as determined pursuant to Executive Order or Public Law; and

(iii) Not received by the service member prior to the service member’s deployment to or service in a Federally-designated combat zone.

(d) \* \* \*

(1) \* \* \*

(iii) *Minimum deduction levels.*

Notwithstanding paragraphs (d)(1)(i) and (d)(1)(ii) of this section, the standard deduction for FY 2009 for each household in the 48 States and the District of Columbia, Alaska, Hawaii, Guam and the U.S. Virgin Islands shall not be less than \$144, \$246, \$203, \$289, and \$127, respectively. Beginning FY 2010 and each fiscal year thereafter, the amount of the minimum standard deduction is equal to the unrounded amount from the previous fiscal year adjusted to the nearest lower dollar increment to reflect changes for the 12-month period ending on the preceding June 30 in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor, for items other than food.

\* \* \* \* \*

(3) \* \* \*

(x) \* \* \* If a household incurs attendant care costs that could qualify under both the medical deduction of § 273.9(d)(3)(x) and the dependent care deduction of § 273.9(d)(4), the costs may be deducted as a medical expense or a dependent care expense, but not both.

(4) *Dependent care.* Payments for dependent care when necessary for a household member to search for, accept or continue employment, comply with the employment and training requirements as specified under § 273.7(e), or attend training or pursue education that is preparatory to employment, except as provided in § 273.10(d)(1)(i). Costs that may be deducted are limited to the care of an individual for whom the household provides dependent care, including care of a child under the age of 18 or an incapacitated person of any age in need of care. The costs of care provided by a relative may be deducted so long as the relative providing care is not part of the same SNAP household as the child or dependent adult receiving care. Dependent care expenses must be separately identified, necessary to participate in the care arrangement, and not already paid by another source on behalf of the household. If a household incurs attendant care costs that could qualify under both the medical deduction of § 273.9(d)(3)(x) and dependent care deduction of § 273.9(d)(4), the costs may be deducted as a medical expense or a dependent care expense, but not both. Allowable dependent care costs include:

(i) The costs of care given by an individual care provider or care facility;

(ii) Transportation costs to and from the care facility; and

(iii) Activity or other fees associated with the care provided to the dependent that are necessary for the household to participate in the care.

\* \* \* \* \*

■ 16. In § 273.10:

■ a. Amend paragraph (e)(1)(i)(E) by removing the words “up to a maximum amount”;

■ b. Revise paragraph (e)(2)(ii)(C);

■ c. Amend paragraph (e)(2)(vi) introductory text by removing the word “households” and adding in its place the word “household”; and

■ d. Remove references to “§ 273.1(e)(2)” wherever they appear and add in their place “§ 273.11(i)”.

The revision reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(C) Except during an initial month, all eligible one-person and two-person households shall receive minimum monthly allotments equal to the minimum benefit. The minimum benefit is 8 percent of the maximum allotment for a household of one, rounded to the nearest whole dollar.

\* \* \* \* \*

■ 17. In § 273.11:

■ a. Remove paragraph (e)(2)(iii) and redesignate paragraph (e)(2)(iv) as new paragraph (e)(2)(iii);

■ b. Redesignate paragraphs (e)(5), (e)(6), and (e)(7) as paragraphs (e)(6), (e)(7), and (e)(8);

■ c. Add a new paragraph (e)(5);

■ d. Revise newly redesignated paragraph (e)(6);

■ e. Revise the last sentence of newly redesignated paragraph (e)(7);

■ f. Revise the second and fourth sentences of newly redesignated paragraph (e)(8);

■ g. Revise paragraph (f)(4);

■ h. Revise paragraph (f)(5);

■ i. Revise the first sentence of paragraph (f)(6); and

■ j. Revise the first sentence of paragraph (f)(7).

The additions and revisions read as follows:

§ 273.11 Action on households with special circumstances.

\* \* \* \* \*

(e) \* \* \*

(5) DAA treatment centers may redeem benefits in various ways depending on the State’s system design.

The designs may include DAA treatment center use of individual household EBT cards at authorized stores, authorization of DAA treatment centers as retailers with EBT access via POS at the treatment center, DAA treatment center use of a treatment center EBT card that is an aggregate of individual household benefits, and other designs. The State agency must ensure that the selected design permits the return of benefits to the household's EBT account through a refund, transfer or other means. Guidelines for approval of EBT systems are contained in part 274 of this chapter.

(6) When a household leaves the DAA treatment center, the DAA treatment center must perform the following:

(i) Notify the State agency by sending a completed change report form to the agency informing the agency of the household's change in address, new address if available, and that the DAA treatment center is no longer the household's authorized representative. Also the DAA treatment center must provide the household with a change report form as soon as it has knowledge the households plans to leave the facility and advise the household to return the form to the appropriate office of the State agency within 10 days of any change the household is required to report. After the household leaves the treatment center, the treatment center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(ii) Provide the household with its EBT card within 5 days of the household's departure if it was in the possession of the DAA treatment center. The DAA treatment center must return any EBT card not provided to departing residents to the State agency within 5 calendar days.

(iii) Return a prorated amount of the household's monthly allotment back to the household's EBT account based on the number of days in the month that the household resided at the DAA treatment center. If the DAA treatment center is authorized as a retailer, the State agency must require the DAA treatment center to process the refund back to the household's EBT account. Under an EBT system where the treatment center has an aggregate EBT card or uses individual cards as the authorized representative, the State agency must transfer the prorated portion of the household's monthly allotment from a DAA treatment center's bank account back to the household's EBT account. In either case, the household, not the DAA treatment center, must be allowed to have sole

access to the household's EBT account at the time the household leaves the DAA treatment center.

(iv) If the household has already left the DAA treatment center, and as a result, the treatment center is unable to refund the benefits in accordance with this paragraph, the DAA treatment center must notify the State agency within 5 days of the household's departure that the DAA treatment center was unsuccessful in its effort to refund the prorated share of its benefits and the State agency must effect the refund from the treatment center's bank account to the household's EBT account within 5 days after receiving notification from the center. These procedures are applicable at any time during the month.

(7) \* \* \* The DAA treatment center shall be strictly liable for all losses or misuse of benefits and/or EBT cards held on behalf of resident households and for all overissuances which occur while the households are residents of the DAA treatment center.

(8) \* \* \* The State agency shall promptly notify FNS when it has reason to believe that a DAA treatment center is misusing benefits and/or EBT cards in its possession. \* \* \* The State agency shall establish a claim for overissuances of benefits held on behalf of resident clients as stipulated in paragraph (e)(7) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. \* \* \*

\* \* \* \* \*

(f) \* \* \*

(4) If the resident has made application on his/her own behalf, the household is responsible for reporting changes to the State agency as provided in § 273.12(a). If the GLA is acting in the capacity of an authorized representative, the GLA shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and when the household leaves the GLA. The GLA shall return any household's benefits to the State agency if they are received after the household has left the group living arrangement.

(5) When the household leaves the facility and the GLA acts as an authorized representative for purposes of redeeming benefits using individual household cards or an aggregate card on behalf of the residents (regardless of the method of application), the same provisions applicable to drug and alcoholic treatment centers in paragraphs (e)(5) and (e)(6) of this section also apply to GLAs.

(6) The same provisions applicable to drug and alcoholic treatment centers in

paragraphs (e)(7) and (e)(8) of this section also apply to GLAs when acting as an authorized representative. \* \* \*

(7) If the residents are certified on their own behalf, the GLA may either act as the household's authorized representative for purposes of redeeming benefits to be used to purchase meals served either communally or individually to eligible residents or allow eligible residents to retain their EBT card and benefits to purchase and prepare food for their own consumption. \* \* \*

\* \* \* \* \*

■ 18. In § 273.12:

- a. Revise the section heading and paragraphs (a)(1)(i) through (a)(1)(v);
- b. Revise paragraph (a)(2);
- c. Revise paragraph (a)(5)(ii)(B);
- d. Revise paragraph (a)(5)(iii);
- e. Revise paragraph (a)(5)(iv);
- f. Revise paragraph (b)(2)(vii) and (b)(2)(x);
- g. Revise paragraph (c)(3);
- h. Amend paragraph (e)(1)(B) by removing the reference "273.9(d)(7)" and replacing it with the reference "273.9(d)(1)"; and
- i. Amend paragraph (e)(1)(C) by removing the reference "273.9(d)(8)" and replacing it with the reference "273.9(d)(6)".

The revisions read as follows:

#### § 273.12 Reporting requirements.

(a) \* \* \*

(1) \* \* \*

(i) (A) A change of more than \$100 in the amount of unearned income, except changes relating to public assistance (PA) or general assistance (GA) in project areas in which GA and food stamp cases are jointly processed. The State agency is responsible for identifying changes during the certification period in the amount of PA, or GA in jointly processed cases. If GA and food stamp cases are not jointly processed, the household is responsible for reporting changes in GA of more than \$100.

(B) A change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income.

(C) One of the following, as determined by the State agency (different options may be used for different categories of households as long as no household is required to report under more than one option; the State may also utilize different options in different project areas within the State):

(1) A change in the wage rate or salary or a change in full-time or part-time employment status (as determined by

the employer or as defined in the State's PA program), provided that the household is certified for no more than 6 months; or

(2) A change in the amount earned of more than \$100 a month from the amount last used to calculate the household's allotment, provided that the household is certified for no more than 6 months.

(D) Beginning FY 2018, and for every fiscal year thereafter, the dollar amounts in paragraphs (a)(1)(i)(A) and (C) of this section shall be adjusted and rounded to the nearest \$25 to reflect changes in the Consumer Price Index for the All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor (for the 12-month period ending the preceding June).

(ii) All changes in household composition, such as the addition or loss of a household member.

(iii) Changes in residence and the resulting change in shelter costs.

(iv) Acquisition of a licensed vehicle that is not fully excludable under § 273.8.

(v) A change in liquid resources, such as cash, stocks, bonds, and bank accounts that reach or exceed the resource limits as described in § 273.8(b) for elderly or disabled households and for all other households, unless these assets are excluded under § 273.8.

\* \* \* \* \*

(2) Certified households must report changes within 10 days of the date the change becomes known to the household, or at the State agency's option, the household must report changes within 10 days of the end of the month in which the change occurred. For reportable changes of income, the State agency shall require that change to be reported within 10 days of the date that the household receives the first payment attributable to the change. For households subject to simplified reporting, the household must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household receives the payment with at least 10 days remaining in the month. If there are not 10 days remaining in the month, the household must report within 10 days from receipt of the payment. Optional procedures for reporting changes are contained in paragraph (f) of this section for households in States with forms for jointly reporting SNAP and public assistance changes and SNAP and general assistance changes.

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \*

(B) For households required to submit a periodic report, a written and oral explanation of the reporting requirements including:

(1) The additional changes that must be addressed in the periodic report and verified;

(2) When the report is due;

(3) How to obtain assistance in filing the periodic report; and

(4) The consequences of failing to file a report.

\* \* \* \* \*

(iii) Periodic report. (A) Exempt households. The State agency must not require the submission of periodic reports by households certified for 12 months or less in which all adult members are elderly or have a disability with no earned income.

(B) Submission of periodic reports by non-exempt households. Households that are certified for longer than 6 months, except those households described in § 273.12(a)(5)(iii)(A), must file a periodic report between 4 months and 6 months, as required by the State agency. Households in which all adult members are elderly or have a disability with no earned income and are certified for periods lasting between 13 months and 24 months must file a periodic report once a year. In selecting a due date for the periodic report, the State agency must provide itself sufficient time to process reports so that households that have reported changes that will reduce or terminate benefits will receive adequate notice of action on the report in the first month of the new reporting period.

(C) The periodic report form must request from the household information on any changes in circumstances in accordance with paragraphs (a)(1)(i) through (a)(1)(vii) of this section and conform to the requirements of paragraph (b)(2) of this section.

(D) If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

(E) If a household fails to file a complete report by the specified filing date, the State agency shall provide the

household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If an eligible household files a complete periodic report during this 10 day period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date. If the household does not respond to the reminder notice, the household's participation shall be terminated and the State agency must send an adequate notice of termination described in paragraph (a)(5)(iii)(C) of this section.

(F) If an eligible household that has been terminated for failure to file a complete report files a complete report after its extended filing date under (E), but before the end of the issuance month, the State agency may choose to reinstate the household. If the household has requested a fair hearing on the basis that a complete periodic report was filed, but the State does not have it, the State agency shall reinstate the household if a completed periodic report is filed before the end of the issuance month.

(G) The periodic report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that a household required to report less frequently than quarterly shall report when its monthly gross income exceeds the monthly gross income limit for its household size in accordance with paragraph (a)(5)(v) of this section, and able-bodied adults subject to the time limit of § 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(H) If the State agency uses a combined periodic report for SNAP and TANF or Medicaid, the State agency shall clearly indicate on the form that SNAP-only households need not provide information required by another program. Non-applicant household or family members need not provide SSNs or information about citizenship or immigration status.

(iv) *Processing periodic reports.* In selecting a due date for the periodic report, the State agency must provide itself sufficient time to process reports so that households will receive adequate notice of action on the report in the first month of the new reporting period. The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report. The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report.

Benefits should be issued in accordance with the normal issuance cycle if a complete report was filed timely.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) Include a statement to be signed by a member of the household (in accordance with § 273.2(c)(7) regarding acceptable methods of signature) indicating his or her understanding that the information provided may result in reduction or termination of benefits;

\* \* \* \* \*

(x) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (including the statutory citation, the title of the statute, and the fact that providing Social Security numbers is mandatory except that non-participating household or family members need not provide SSNs or information about citizenship or immigration status), the purpose of requiring Social Security numbers, the routine uses for Social Security numbers, and the effect of not providing Social Security numbers. This statement may be on the form itself or included as an attachment to the form.

\* \* \* \* \*

(c) \* \* \*

(3) Unclear information. During the certification period, the State agency might obtain unclear information about a household's circumstances from which the State agency cannot readily determine the effect on the household's continued eligibility for SNAP, or in certain cases benefit amounts. The State agency may receive such unclear information from a third party. Unclear information is information that is not verified, or information that is verified but the State needs additional information to act on the change.

(i) The State agency must pursue clarification and verification (if applicable) of household circumstances using the following procedure if unclear information received outside the periodic report is: Fewer than 60 days old relative to the current month of participation; and would, if accurate, have been required to be reported under the requirements that apply to the household under 273.12 based on the reporting system to which they have been assigned. Additionally, the State agency must pursue clarification and verification (if applicable) of household circumstances using the following procedure for any unclear information that appears to present significantly conflicting information from that used by the State agency at the time of certification. The procedures for unclear

information regarding matches described in § 272.13 or § 272.14 are found in paragraph (iii) of this section.

(A) The State agency shall issue a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances, which affords the household at least 10 days to respond and to clarify its circumstances, either by telephone or by correspondence, as the State agency directs, and which states the consequences if the household fails to respond to the RFC.

(B) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency must issue a notice of adverse action as described in § 273.13. The State has two options:

(1) The State agency may elect to send a notice of adverse action that terminates the case, explains the reasons for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program; or

(2) Alternatively, the State agency may elect to issue a notice of adverse action that suspends the household for 1 month before the termination becomes effective, explains the reasons for the action, and advises the household of the need to submit new information if it wishes to continue participating. If the household responds satisfactorily to the RFC during the period of suspension, the State agency must reinstate the household without requiring a new application, issue the allotment for the month of suspension and, if necessary, adjust the household's participation with a new notice of adverse action.

(C) If the household responds to the RFC and provides sufficient information, the State agency must act on the new circumstances in accordance with paragraphs (c)(1) or (c)(2) of this section, as appropriate.

(ii) If the unclear information does not meet the criteria in paragraph (c)(3)(i) of this section and does not relate to the matches described in paragraph (c)(3)(iii) of this section, then the State agency shall not act on the information or require the household to provide information until the household's next certification action or periodic report is due. A State may follow up with a household to provide information on a voluntary basis if that information would result in an increase in benefits but may not take adverse action if the household does not respond.

(iii) Unclear information resulting from certain data matches. If a State receives match information from a

match described in § 272.13 or § 272.14, the State shall follow up with a notice of match results as described in § 272.13(b)(4) and § 272.14 (c)(4). The notices must clearly explain what information is needed from the household and the consequences of failing to respond to the notice as explained in paragraphs (c)(3)(iii)(A) and (B) this section.

(A) For households subject to change reporting, if the household fails to respond to the notice of match results or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency shall issue a notice of adverse action as described in § 273.13 that terminates the case.

(B) For all households not subject to change reporting, if the household fails to respond to the notice of match results or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency shall remove the subject individual and the individual's income from the household and adjust benefits accordingly. As appropriate the State agency shall issue a notice of adverse action as described in § 273.13.

\* \* \* \* \*

**§ 273.13 [Amended]**

■ 19. In § 273.13, amend paragraph (b)(10) by removing the word "coupon" and adding in its place the word "benefit".

■ 20. In § 273.14:

■ a. Amend paragraph (b)(2) by adding a new fourth sentence; and

■ b. Amend the first sentence of paragraph (b)(3) by removing the words "a face-to-face interview" and adding in their place the words "an interview".

The addition reads as follows:

**§ 273.14 Recertification.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* The provisions of § 273.2(c)(7) regarding acceptable signatures on applications also apply to applications used at recertification.

\* \* \* \* \*

\* \* \* \* \*

■ 21. In § 273.15:

■ a. Revise the second sentence of paragraph (c)(1);

■ b. Amend paragraph (c)(2) by removing the word "coupon" and adding in its place the words "SNAP benefit";

■ c. Amend paragraph (c)(3) by removing the word "coupon" and adding in its place the words "SNAP benefit";

■ d. Amend paragraph (q)(4) by removing the word "coupon" and

adding in its place the words “SNAP benefit”; and

■ e. Amend paragraph (s) introductory text by removing the word “coupon” and adding in its place the words “SNAP benefit”.

The revision reads as follows:

**§ 273.15 Fair hearings.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* Decisions that result in an increase in household benefits shall be reflected in the household’s EBT account within 10 days of the receipt of the hearing decision even if the State agency must provide supplementary benefits or otherwise provide the household with an opportunity to obtain the benefits outside of the normal issuance cycle. \* \* \*

\* \* \* \* \*

■ 22. In § 273.16, revise paragraph (c)(2) to read as follows:

**§ 273.16 Disqualification for intentional Program violation.**

\* \* \* \* \*

(c) \* \* \*

(2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.

\* \* \* \* \*

**§ 273.18 [Amended]**

■ 23. In § 273.18, remove paragraph (f)(4) and redesignate paragraphs (f)(5), (f)(6), and (f)(7) as paragraphs (f)(4), (f)(5), and (f)(6).

■ 24. In § 273.21, revise paragraph (h)(2)(vi) to read as follows:

**§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).**

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(vi) Include a statement to be signed by a member of the household (in accordance with § 273.2(c)(7) regarding acceptable methods of signature), indicating his or her understanding that the provided information may result in changes in the level of benefits, including reduction and termination;

\* \* \* \* \*

■ 25. In § 273.25:

■ a. Revise the heading of the section and paragraph (a)(1);

■ b. Amend the heading and introductory text of paragraph (b) by removing the word “SFSP” and adding in its place the word “S–SNAP” wherever it occurs;

■ c. Amend paragraph (b)(1) by removing the word “SFSP” and adding

in its place the word “S–SNAP” and by removing the word “FSP” wherever it occurs and adding in its place the word “SNAP”;

■ d. Amend paragraphs (b)(2) and (b)(3) by removing the word “SFSP” wherever it occurs and adding in its place the word “S–SNAP”;

■ e. Amend paragraph (c) by removing the word “SFSP” in the first sentence and adding in its place the word “S–SNAP” and by revising the second and third sentences; and

■ f. Amend paragraphs (d) and (e) by removing the word “SFSP” wherever it occurs and adding in its place the word “S–SNAP”.

The revisions read as follows:

**§ 273.25 Simplified SNAP.**

(a) \* \* \*

(1) Simplified SNAP (S–SNAP) means a program authorized under 7 U.S.C. 2035.

\* \* \* \* \*

(c) \* \* \* If a household is not receiving TANF assistance (payments have not been authorized) at the time of its application for S–SNAP, the State agency must process the application using the regular SNAP requirements of § 273.2, including processing within the 30-day time frame, and screening for and provision of expedited service if eligible. The State agency must determine under regular SNAP rules the eligibility and benefits of any household that it has found ineligible for TANF assistance because of time limits, more restrictive resource standards, or other rules that do not apply to SNAP.

\* \* \* \* \*

■ 26. Revise § 273.26 to read as follows:

**§ 273.26 General eligibility guidelines.**

(a) *Eligible programs.* The State agency may elect to provide transitional SNAP benefits to households whose participation in the following programs is ending:

(1) TANF or State Maintenance of Effort (MOE) funded cash assistance programs, as authorized under part A of Title IV of the Social Security Act; or

(2) A State-funded cash assistance (SFCA) program that provides assistance to families with children. Eligible SFCA programs may include programs funded by both state and local funds provided the programs are intended to be statewide.

(b) *Description of State transitional benefits.* A State agency that chooses to provide transitional benefits must describe features of its transitional SNAP benefits alternative in its plan of operation, as specified in § 272.2(d)(1)(xvi)(H) of this chapter and

as described in § 273.26(b)(1) through (b)(6).

(1) A statement that transitional benefits are available;

(2) The eligible programs by which households may qualify for transitional benefits;

(3) If the State agency is offering transitional benefits through a SFCA program, in addition to TANF or MOE, whether the SFCA program participation runs concurrently, sequentially, or alternatively to the TANF or MOE program;

(4) The categories of households eligible for such benefits;

(5) The maximum number of months for which transitional benefits will be provided; and

(6) Any other items required to be included under this subpart H.

(c) *Eligible households.* The State agency may limit transitional benefits to households in which all members had been receiving TANF, MOE, or SFCA, or it may provide such benefits to any household in which at least one member had been receiving TANF, MOE, or SFCA. If a member of a household has been sanctioned but the household is still receiving benefits, the remaining eligible household members may receive transitional SNAP benefits if the cash assistance ends for another reason.

(d) *Ineligible households.* The State agency may not provide transitional benefits to a household that is leaving TANF, MOE, or SFCA when:

(1) The household is leaving TANF or MOE due to a full-family TANF sanction or the household is leaving the SFCA program due to a full-family SFCA program sanction;

(2) The household is a member of a category of households designated by the State agency as ineligible for transitional benefits;

(3) All household members are ineligible to receive SNAP benefits because they are:

(i) Disqualified for an intentional program violation in accordance with § 273.16;

(ii) Ineligible for failure to comply with a work requirement in accordance with § 273.7;

(iii) Receiving SSI in a cash-out State in accordance with § 273.20;

(iv) Ineligible students in accordance with § 273.5;

(v) Ineligible aliens in accordance with § 273.4;

(vi) Disqualified for failing to provide information necessary for making a determination of eligibility or for completing any subsequent review of its eligibility in accordance with § 273.2(d) and § 273.21(m)(1)(ii);

(vii) Disqualified for knowingly transferring resources for the purpose of

qualifying or attempting to qualify for the program as provided at § 273.8(h);

- (viii) Disqualified for receipt of multiple SNAP benefits;
- (ix) Disqualified for being a fleeing felon in accordance with § 273.11(n); or
- (x) ABAWD who fail to comply with the requirements of § 273.24.

(e) *Optional household exclusions.* The State agency has the option to exclude households where all household members are ineligible to receive SNAP benefits because they are:

- (1) Disqualified for failure to perform an action under Federal, State or local law relating to a means-tested public assistance program in accordance with § 273.11(k);
- (2) Ineligible for failing to cooperate with child support agencies in accordance with § 273.11(o) and (p); or
- (3) Ineligible for being delinquent in court-ordered child support in accordance with § 273.11(q).

(f) *Recalculating eligibility for denied households.* The State agency must use procedures at § 273.12(f)(3) to determine the continued eligibility and benefit level of households denied transitional benefits under § 273.26.

■ 27. In § 273.27:

- a. Revise the first, fourth, and fifth sentences of paragraph (a) introductory text;
- b. Revise paragraphs (a)(1) and (a)(2); and
- c. Revise the first and third sentences of paragraph (c).

The revisions read as follows:

**§ 273.27 General administrative guidelines.**

(a) When a household leaves TANF, MOE, or a SFCA program, a State agency that has elected this option shall freeze the household's benefit allotment for up to 5 months after making an adjustment for the loss of TANF, MOE, or the SFCA. \* \* \* Before initiating the

transitional period, the State agency, without requiring additional information or verification from the household, must recalculate the household's SNAP benefit amount by removing the TANF payment, MOE payment, or the SFCA payment from the household's SNAP income.

At its option, the State agency may also adjust the benefit to account for:

- (1) Changes in household income that it learns about from another State or Federal means-tested assistance program in which the household participates; or
- (2) Automatic annual changes in the SNAP benefit rules, such as the annual cost of living adjustment, the standard deduction adjustment, and the adjustment to the cap on the excess shelter deduction.

\* \* \* \* \*

(c) When a household leaves TANF, MOE, or SFCA program, the State agency at its option may end the household's existing certification period and assign the household a new certification period that conforms to the transitional period. \* \* \* If the transitional period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action under § 273.10(f)(4) but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF, MOE, or SFCA program during the transitional period.

■ 28. In § 273.29, revise paragraphs (c) and (d) to read as follows:

**§ 273.29 Transitional notice requirements.**

\* \* \* \* \*

(c) A statement that if the household returns to TANF, MOE, or SFCA program during its transitional benefit

period, it will be asked to reapply for SNAP at the same time. However, if the household has been assigned a new certification period in accordance with § 273.27(c), the notice must inform the household that it must be recertified if it returns to TANF, MOE, or SFCA program during its transitional period;

(d) A statement explaining any changes in the household's benefit amount due to the loss of TANF income, MOE income, or SFCA program income and/or changes in household circumstances learned from another State or Federal means-tested assistance program;

\* \* \* \* \*

■ 29. Revise § 273.32 to read as follows:

**§ 273.32 Households that return to TANF, MOE, or SFCA program during the transitional period.**

If a household receiving transitional benefits starts to receive TANF, MOE, or SFCA program during the transitional period, the State agency shall use the information from the TANF, MOE, or SFCA application to re-determine continued SNAP eligibility and benefits, at the same time that the TANF, MOE, or SFCA application is being processed and follow procedures in § 273.2(j) for joint processing of SNAP/TANF applications. This includes processing the application within 30 days. However, for a household assigned a new certification period in accordance with § 273.27(c), the household must be recertified if it returns to TANF, MOE, or the SFCA program during its transitional period.

Dated: December 15, 2016.

**Kevin Concannon,**  
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