DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 280

[Amdt. No. 192]

Food Stamp Program—Emergency Food Assistance for Victims of Disasters

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency rulemaking.

SUMMARY: This emergency final rulemaking would implement Section 5(h)(1) of the Food Stamp Act of 1977 which requires the Secretary to establish temporary emergency standards for food stamp eligibility for the duration of the emergency. The Act also directs the Secretary to promulgate such standards without regard to Section 4(c) of the Act or the procedures set forth in Section 553 of Title 5 of the United States Code.

DATE: This rulemaking is effective January 27, 1981.

FOR FURTHER INFORMATION CONTACT: Susan D. McAndrew, Chief, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-6535.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as not significant. The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement.

Robert Greenstein, Administrator, Food and Nutrition Service, has determined that an emergency situation exists which warrants publication of this emergency final action without opportunity for public comment prior to its effective date so that, in the event a disaster situation occurs prior to finalization of the proposed disaster procedures, the Department may immediately put such procedures into effect.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest, and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.**

Currently, State agencies are following FNS' disaster instructions derived from the Food Stamp Act of 1964. In part, this Act, as amended, authorized the Secretary to establish temporary emergency standards of eligibility without regard to income and other financial resources for project areas that had suffered the effects of disasters.

Section 5 of the Food Stamp Act of 1977 deleted the phrase "without regard to income and other financial resources," thus allowing income and resouces of applicants to be considered when determining eligibility for emergency assistance. A proposed rulemaking will be published shortly incorporating this provision. The proposed rulemaking will also include other changes established by law or Congressional intent.

In the interim, this emergency rule will implement Section 5(h)(1) of the Food Stamp Act of 1977 which allows the Secretary to promulgate standards as are prescribed for individual emergencies without regard to Section (4)(c) of the Food Stamp Act of 1977 or the procedures established in Section 553 of Title 5 of the United States Code.

In the event that a natural disaster occurs prior to a final rulemaking of the disaster procedures which necessitates an FNS disaster authorization, State agencies will use those procedures prescribed by the Department as necessary to establish temporary emergency standards for food stamp eligibility.

This emergency final rulemaking will be in effect upon publication and will remain in effect until the proposed disaster rulemaking is published in final format.

A new Part 280, previously reserved is being added and reads as follows:

PART 280—EMERGENCY FOOD ASSISTANCE FOR VICTIMS OF DISASTERS

§ 280.1 Interim disaster procedures.

The Secretary shall, after consultation with the official empowered to exercise the authority provided for by Section 302(a) of the Disaster Relief Act of 1974, establish temporary emergency standards of eligibility for the duration of the emergency for households who are victims of a disaster which disrupts commercial channels of food distribution, if such households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. Such standards as are prescribed for individual emergencies may be promulgated without regard to Section 4(c) of this Act or the procedures set forth in Section 553 of Title 5 of the United States Code.

(Catalog of Federal Domestic Assistance Program No. 10.551 Food Stamps)

(Pub. L. 95-113, 91 Stat. 958, (7 U.S.C. 2011-2027) Pub. L. 93-288, 88 Stat. 143)

Dated: January 9, 1981.

Robert Greenstein,

Administrator.

[FR Doc. 81-2649 Filed 1-26-81; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 280

[Amdt. No. 193]

Emergency Food Assistance for Victims of Disasters

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth procedures for the issuance of temporary emergency food stamp assistance during natural disasters. The proposed rule implements section 5(h) of the Food Stamp Act of 1977, which requires the Secretary to establish temporary emergency standards for food stamp eligibility for households that are victims of a disaster which disrupts commerical channels of food distribution. The proposed rule would also replace current regulations governing implementation of section 409 of the Disaster Relief Act of 1974, which authorizes the President to distribute, through the Secretary of Agriculture, emergency food stamp allotments to low income households which are unable to purchase adequate amounts of nutritious food as a result of a disaster which has been declared a "major disaster" by the President. This rule would establish eligibility requirements, including an income/resource test, for use in all disaster situations in which emergency food stamp assistance is authorized. In accordance with the Food Stamp Act of 1977, the proposed rule would also establish a Food and Nutrition Service (FNS) Food Stamp Disaster Task Force to assist States in implementing and operating the disaster program and would require each State agency to formulate a plan of operation for providing emergency food assistance during disasters. This proposed rule should improve program integrity without creating barriers to households with legitimate need for emergency food assistance.

DATE: Comments must be received on or before March 30, 1981, to be assured of consideration.

ADDRESS: Comments should be submitted to: Alberta Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 am to 5:00 pm, Monday through Friday) at Room 678, 500 12th Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sue McAndrew, Chief, Program Standards Branch, Program Development Division, Food and Nutrition Service, Washington, D.C. 20250, (202) 447-6535. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from Ms. McAndrew.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant". The Disaster Relief Act of 1974 authorizes the President to declare a "major disaster" upon request by the State or States affected by natural disasters. The Secretary of Agriculture is authorized by executive order to determine whether houeholds residing in food stamp project areas within major disaster areas are in need of food assistance which cannot be met by the existing Food Stamp Program.

The proposal has also been reviewed with regard to the requirements of Pub. L. 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that the proposal does not have significant economic impact on a substantial number of small entities. The proposal includes State planning requirements, but does not require the submission of planning documents from local jurisdictions. It establishes eligibility standards and procedures for use in the event of issuance of emergency food stamps resulting from a natural disaster. The primary impact of these standards and procedures is on State governments and on potential individual recipients. To the extent that county or other local governments assist in emergency food stamp administration in the event of a disaster, they would be affected. However, the number of natural disasters in which emergency food stamps are issued is very small, and only a very small number of jurisdictions are affected. Even for those that are affected the economic impact should not be significant, especially since the proposal allows the State agency flexibility to use volunteers, disaster relief agencies, etc. to assist in administering the emergency food stamp program during disasters.

The Food Stamp Act of 1964 authorized the Secretary to provide for emergency coupon issuance in disasters which were not Presidentially declared. This type of disaster declaration was to be made only in circumstances which involved the disruption, and subsequent restoration, of commercial channels of food distribution. The Act also authorized the Secretary to establish temporary emergency standards of eligibility without regard to income and other financial resources for disaster victims. These temporary standards also applied to victims of mechanical disasters; for example, situations where equipment, such as computers used for the production of authorization-to-purchase documents, was not operable.

The Food Stamp Act of 1977, Pub. L. 95-113, 91 Stat. 958, September 29, 1977, retains the provisions requiring the use of emergency standards of eligibility in any natural disaster that disrupts commercial channels of food distribution but deletes the provisions permitting such standards for victims of mechanical disasters. The House Committee Report notes that this latter provision was deleted because it did not appear to be a necessary one and would have been administratively difficult to apply (House Report No. 95-464, 95th Congress, 1st Session, p. 152). The 1977 Act also deleted the provision which required the disregard of income and other financial resources of households applying for disaster assistance. The theme of the 1977 Act and its legislative history, as it related to disasters, was that the Program must adequately meet the food needs of disaster victims but must also do a more effective job of ensuring that only needy victims are served.

Since the passage of the 1977 Act, the Department has tightened disaster food stamp operations substantially. Effective screening techniques have been used in a number of disasters, such as in Alabama and Mississippi following Hurricane Frederick in 1979 and in Grand Island, Nebraska following a tornado in 1980.

Nevertheless, there is a need for a formal amendment of the food stamp regulations governing disasters to establish and codify systematic procedures for disaster situations. These proposals build upon the Department's experience in tightening and improving disaster operations in recent years. The proposals apply both to major disasters that are Presidentially declared (under the authority of the Disaster Relief Act of 1974) and to other disasters where a disaster declaration is made under the authority of the Food Stamp Act of 1977. The proposals would, in nearly all circumstances, apply a single set of rules to both types of disaster declarations.

In reviewing these regulations, commenters should keep two basic points in mind. First, these regulations make a shift in the purpose of disaster food stamp issuance. The 1964 Act required that disaster victims be eligible for emergency food stamps without regard to income and resources. As a result, the Food Stamp Program was available as a general form of disaster aid to stricken areas. The 1977 Act deleted this requirement, and left to the Department's discretion the issue of establishing eligibility standards for disaster victims. The eligibility standards set forth in these proposals are, in some respects, more restrictive than those governing the regular Food Stamp Program. The underlying concept of this proposal is to limit the issuance of disaster food stamps to those individuals facing emergency situations.

This leads to the second key issue underlying these regulations. These proposals assume that the regular Food Stamp Program will continue to operate during the disaster. Rather than operate a large disaster Food Stamp Program which, in large part, replaces the regular Food Stamp Program and for which a significant proportion of the population in a stricken area might be eligible (as could have occurred in the past), these new rules envision a restricted disaster Food Stamp Program that operates alongside the regular Program. For example, persons who had been laid off shortly before the disaster and are eligible for the regular Food Stamp Program might, under these rules, be ineligible for disaster food stamps. Such persons would, under these proposals, still be able to apply and be processed for the regular Food Stamp Program during the disaster.

This shift in the nature of the disaster Food Stamp Program should reduce both food stamp costs and the potential for error and abuse during disasters. Fewer persons will be eligible for and receive emergency food stamps. In addition, since some new applicants will continue to apply for the regular rather than the disaster Food Stamp Program, they will be subject to more extensive verification procedures.

The proposed rule also is designed to increase advance planning for disasters at the Federal, State and local levels. Planning should produce more efficient food stamp operations during a disaster. This can result in better service for those in legitimate need and in reduced errors and management problems.

The proposal also requires the evaluation and auditing of disaster activities after disaster food stamp issuance has been completed. These provisions are designed to identify weaknesses in Program operations so that corrective actions can prevent or minimize their occurrence in the future.

Implementation and Submission of State Disaster Plans

A State Disaster Plan, which would be an attachment to the State Plan of Operation, would be submitted to FNS within 120 days of publication of final rules. FNS would approve or deny the plan or request additional information within 30 days of receipt. The plan would include the identification of key contact persons involved in coordination of overall disaster relief activities at the Federal and State levels and in the principal private disaster relief agencies in the State; identification of which responsibilities will be borne by the local project area and which by State level officials in the event of a disaster; the designation of a State food stamp disaster coordinator; procedures to identify and prevent duplicate disaster food stamp issuance; and plans for post-disaster audit activity.

The purpose of this Plan is to ensure that necessary advance preparations are made. As recently issued final regulations on the State Plan of Operations make clear, the Disaster Plan would not necessarily have to be redone each year. The State agency would be required each year, as part of its State Plan submittal process, to review the existing Disaster Plan, update any parts that were no longer current, and submit any necessary updates to FNS along with a certification that all parts not updated have been reviewed and are still current. This means that much of the State agency work in designing and writing the Disaster Plan can be on a one-time basis.

The Plan would not encompass all necessary State planning activities. Other advance planning by State agencies is also needed to ensure efficient food stamp operations in the event of a disaster, but the Department does not believe it necessary for State agencies to submit material on other disaster planning activities as a formal part of the State Plan. Instead, the proposed rules require that State agencies develop procedures for such tasks as determining the geographical boundaries of the disaster area, coordinating with other agencies, and informing the public during a disaster about the disaster food stamp procedures and requirements. These procedures would be subject to review during the annual FNS review of State agency operations rather than attached to the State Plan.

Application Forms

The Department is developing a special application form for temporary emergency food stamp assistance during disasters. State agencies would be allowed to print State forms using the FNS-designed format or submit their own application form to FNS for approval. State-designed application forms would, at a minimum, have to include the information required by § 280.7(c)(1) in this proposed rule, which is necessary to make the eligibility determinations prescribed by this rule. In addition, State agencies would be allowed to request social security numbers (SSN), although a household could not be denied benefits solely for failure to provide an SSN. The Department would encourage those State agencies that design their own forms to design them so that they serve as applications, worksheets, and issuance documents. The Department also encourages State agencies to keep the disaster application short and simple. These forms would have to be available for use within 180 days after publication of final rules.

Disaster Task Force

Section 5(h) of the Food Stamp Act of 1977 directs the Secretary to establish a food stamp disaster task force to assist State agencies in implementing and operating the disaster program. The Act further provides that this disaster task force shall be available to go into a disaster area and provide direct assistance to State and local officials. In accordance with this mandate, two groups would be established to provide this assistance: An FNS National Disaster Task Force and a Regional Disaster Task Force.

The FNS National Disaster Task Force would assist the Regional Disaster Task Force in coordinating overall Food Stamp and Food Distribution Program disaster response activities and expedite approval of disaster designation requests and policy clarifications through the normal channels.

The Regional Disaster Task Force would serve as the primary coordinator for disaster activities, gathering data, evaluating the need for emergency assistance, and providing information and/or recommendations to the National Disaster Task Force.

The Department is not requiring a disaster task force at the State level because it believes States should be provided flexibility on how to structure their disaster food stamp operations. State agencies should ensure that they have appropriate organizational arrangements to respond promptly and effectively to disasters, and may wish to consider establishing their own State Task Force.

Disaster Declarations

Section 5(h) of the Food Stamp Act of 1977 directs that a disaster declaration may be issued only when a disaster has caused the disruption and subsequent restoration of commercial channels of food distribution. The Disaster Relief Act of 1974 does not contain similar conditions. It authorizes the President to distribute emergency food stamps through the Secretary of Agriculture to victims of a Presidentially declared major disaster.

This proposed rule would require that three conditions be met before disaster food stamp assistance could be authorized under the Food Stamp Act of 1977. The conditions are: (1) That commercial channels of food distribution must have been disrupted; (2) that channels of food distribution must have been restored; and (3) that the normal, ongoing Food Stamp Program is unable to expeditiously handle the volume of households affected by the disaster and in need of emergency food stamp assistance.

The proposed rule requires that two of these conditions be met before disaster food stamps will be authorized in areas affected by a Presidentially declared major disaster. The two conditions are that commercial channels of food distribution must be available (otherwise food stamps would be of no use) and that the ongoing Food Stamp Program is unable to handle the increased number of households needing assistance.

Under the proposed rule, commercial channels of food distribution would not need to have been disrupted in a Presidentially declared major disaster area before the disaster assistance procedures could be used. It is conceivable that such a disaster could occur without disrupting normal channels of food distribution. However, the conditions for a food stamp disaster designation would be (except in unusual circumstances) the same for major disasters declared by the President and for other disasters where emergency food stamp issuance is authorized under the Food Stamp Act of 1977.

In the event that a more limited emergency occurs which does not meet these disaster criteria, State agencies should be able to meet the needs of disaster victims through the regular Food Stamp Program. State agencies would be encouraged in such circumstances to request disaster relief agencies that are responding to the limited disaster to provide information on the ongoing Food Stamp Program and to refer potentially eligible households to the Program.

The Department has proposed to define a disruption in the commercial channels of food distribution to include conditions that limit households' access to food outlets as well as the closing and reopening of retailer and wholesaler concerns. Significantly curtailed business hours and impassable roads would be considered as evidence of disrupted food distribution.

Current rules are very flexible with regard to disaster authorizations. They permit authorization periods, i.e., the period of time during which disaster certification procedures are authorized for use, of one week, a half-month, three-quarters of a month and a full month. The current rules also allow disaster benefits to be issued to households in full month, three-quarter month, half month and one-quarter month increments. The proposed rules modify this approach to simplify Program administration. Under the proposed rules, separate decisions would be made regarding the length of the authorization period and the length of the benefit period. In the event of a disaster, State agencies could request an authorization period of from 3 to 30 days. The Department expects that only in unusual circumstances would more than 2 weeks be needed. State agencies could get extensions to their initially approved authorized period. In many instances, it may be desirable to request an authorization period of 2 weeks and get an extension, if necessary, since it may not be possible to accurately predict, at the onset of a disaster, how much time will be needed to process households.

The other decision State agencies and FNS would have to make is how long the benefit period should be. This decision would be limited to either a half-month or full month. This proposed change from four options to two is based on our experience that showed that the one week and three-quarter month options were rarely used and the half-month and full-month options fit nearly all situations. These latter two options are also the most feasible administratively.

The way that disaster designations would be made under the proposed rules would be for State agencies to request authorization periods of 3 to 30 days, preferably no longer than 2 weeks, and half-month or full-month benefit periods. The determination as to the length of the authorization period, which is the length of time State agencies can use disaster certification procedures, would be based on an estimate of the time it will take to process all of the households affected by the disaster. The length of the benefit period, which is the length of time corresponding to the portion of the allotment to be provided (i.e., one half month and full month), would be based on an estimate of how long it will take households to return to their normal means of support. The authorization and benefit periods may be the same or the benefit period may be longer than the authorization period. The authorization period should not be longer than the benefit period.

Extensions of the authorization period would be made if the original period proves to be too short to process all affected households. If the extension goes beyond the original benefit period, FNS will determine whether those households that received disaster benefits during the initial authorization period can be recertified and receive them once again. In most disaster situations, however, extensions, should not be needed.

Determination of Household Eligibility

Given the Congressional mandate to "screen out those who have high income and resources," (H.R. Rpt. No. 95–464, 95th Cong., 1st Sess., p. 153) the Department has given careful consideration to establishing guidelines for eligibility that would limit disaster eligibility to those households in need of emergency assistance (that is, those persons affected in such a way that they could not meet their own food needs). The proposed rule established two criteria which households must meet to be eligible for disaster food stamps.

The first criterion is designed to restrict eligibility for disaster food stamp issuance to those households who were adversely affected by the disaster. Unless a household had experienced at least one of the following expenses, it would be automatically ineligible: Expenses to repair damage to its home or other property essential to the household's employment or self-employment; expenses for temporary shelter if the household's home is uninhabitable or if the household cannot reach its home; expenses for moving out of an area evacuated due to a disaster; expenses related to protecting a home or business from the effects of a disaster (such as expenses for boarding up windows in advance of hurricanes); expenses due to a disaster-related personal injury including funeral and burial expenses should a household member die as a result of a disaster; loss or inaccessibility of income due to the disaster or inaccessibility of cash resources that is expected to last through most of the benefit period. Loss or inaccessibility of income involves a reduction, termination, or a significant delay in receipt of income, due to interruption of earnings or of other income. This could occur, for example, if a household missed work because its place of employment closed due to the disaster. Cash resources, such as money in checking and saving accounts, would be inaccessible if, among other things, the funds were in a bank or other financial institution that was closed by the disaster and was expected to remain closed during most or all of the disaster benefit period.

The second criterion is designed to screen out those households that, while they were adversely affected by the disaster, are not in sufficient need to warrant emergency food stamp issuance. The second standard is that a household is eligible for disaster food stamps assistance only if the total of its take-home pay expected to be received during the benefit period, plus available cash resources, minus its disaster-caused expenses, is less than or equal to the maximum food stamp monthly income limit (disregarding for the earned income deduction) for its household size. In computing the maximum food stamp maximum income limit, the standard deduction and the maximum shelter/child care deduction for non-elderly or non-disabled households would be added to the food stamp net income limit for the appropriate household size. The medical deduction for the elderly and disabled and unlimited shelter deduction for the elderly and disabled would not be used, as these elderly/disabled deductions do not have maximums. In addition, the earned income deduction would not be added because households' take-home pay, rather than their gross income, would be compared to this income limit. (Take-home pay rather than gross income is used in order to expedite certifications, as households are more likely to know their monthly take-home pay than their monthly gross income). FNS would supply all State agencies with a table showing the appropriate income ceiling by household size, so that State agencies would not have to perform these computations themselves.

Because this standard requires that cash resources be added to income, large numbers of households in disaster areas would be effectively screened out of the disaster program. A modest amount of available cash resources could disqualify a household. This is in keeping with the notion that the disaster food stamp program should be limited to those with emergency needs.

In connection with this income/resource test, there is a need to determine how income and resources are counted, and which expenses are allowed to be deducted. Income would be counted if it had already been received in the disaster benefit period or if it is reasonably certain to be received during the benefit period. All cash on hand and all funds in checking and savings accounts would be counted. The only exception to this provision would be those cash resources that are determined to be unavailable to the household for most of the disaster benefit period. State agencies would disregard these inaccessible resources.

Allowable disaster-related expenses would be the same expenses as those which would be used to identify a household as having been affected by a disaster. The allowable expenses would be expenses to repair damage to the household's home or other property essential to employment or self-employment; expenses for temporary shelter if the household's home is uninhabitable or the household cannot reach its home; evacuation expenses; expenses related to protecting property from disaster damage; and expenses due to a disaster-related personal injury (or death).

For an expense to be deductible, the household has to have paid or expect to pay for the expense during the disaster benefit period. Simply incurring the expense, if the household will not pay for it until after the disaster benefit period, would not render the expense deductible. In addition, if the household has received or reasonably anticipates receiving a reimbursement for part of all of the expense during the disaster benefit period, only the net expense to the household would be deductible. (If reimbursement were not anticipated until after the benefit period ended, the full amount of the expense would be deductible.)

Certification periods for persons qualifying for disaster would coincide with the disaster benefit period declared by FNS. If the disaster benefit period was a month, income over the full month period would be counted, disaster-caused expenses that are paid or expected to be paid over the *full month* would be deducted, and the food stamp *monthly* maximum income limit for the appropriate household size would constitute the applicable income/resource limit.

If the disaster benefit period were for a half-month, income over the *half-month* period would be counted, disaster expenses paid or expected to be paid over the *half-month* period would be deducted, and the income/resource limit would be half of the food stamp monthly maximum income limit for the appropriate household size.

Regardless of whether the disaster benefit period was for a half month or a full month, the full amount of accessible cash would be counted.

The State agency would be required to ask households to provide estimates of total take-home pay, accessible cash resources, and allowable disaster caused expenses. The State agency would *not* be required to request itemization of those items, however, because of the need to minimize the length and complexity of the application process.

To summarize, a household would have to meet these two criteria to qualify for emergency food stamps during a disaster.

1. The household has been adversely affected by the disaster.

2. The total of the household's currently available income and cash resources, after deducting disaster related expenses, is less than or equal to the food stamp maximum income limit for its household size.

The household would also have to be purchasing food and preparing meals during the disaster benefit period, and would have to have resided at the time of the disaster within the geographical area authorized for disaster procedures.

The Department recognizes that these eligibility standards are the heart of this proposed rulemaking, and is especially interested in comment on this matter. In addition, the Department wishes to call attention to the fact that section 5(h) of the Food Stamp Act of 1977 permits the Secretary to establish temporary emergency standards for food stamp eligibility during a disaster without regard to the normal requirements of the Administrative Procedures Act (Sec. 553 of Title 5 of the U.S. Code). This means that if an unusual disaster situation warranted unique eligibility standards that differ from those set forth in this rulemaking, the Department could establish separate eligibility standards for that particular disaster.

Verification

This proposed rulemaking adopts a verification system, similar to current disaster rules, which would emphasize food need and rapid application processing. Verification of eligibility criteria, with the exception of identity and residency in the disaster area, would be waived. Verification of both identity and residency would be required and would normally be accomplished through documentary evidence provided by the household, such as, but not limited to, a driver's license, work or school ID, voter registration card or birth certificate. Residency in the disaster area could also be verified by such means as rent receipts and utility bills. The Department recognizes that such documents can be destroyed or be unobtainable in a disaster situation. Therefore, the regulations would allow verification of residency through sources such as telephone books or city directories. This rule proposes to allow the State agency to use a collateral contact as a source of verification when the household's identity and residency cannot be verified through documentary evidence or when a collateral contact would expedite the households' certification. Finally, the Department recognizes that in some unusual situations (such as in the case of a household that arrived in the area just prior to the disaster), verification of residency may simply not be possible. If, despite the efforts of the State agency and the household, residency cannot readily be verified, the household would not be denied for this reason.

Verification of items other than identity and residency would be waived. This is necessary for several reasons. In a disaster situation, households must be served promptly (other provisions of these proposed rules mandate same day service unless this is impossible). In addition, where large numbers of households are adversely affected by a disaster, the amount of staff time the State agency can make available for each case is generally very limited, and does not allow for extensive verification. However, the application for disaster assistance would include a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act and a statement that, after the disaster is over, audits which include verification will be conducted of a sample of households (this is discussed in more detail later in this preamble). An oral explanation of the applicable penalties, and of the fact that post-disaster audits will be conducted, would be provided during the interview as well.

Processing Standards

Households applying for disaster assistance would be provided same day service unless restrictions such as curfews make it impossible for the State agency to do so. In these situations, eligible households would be provided an opportunity to participate no later than the day following the date of application. These standards are designed to ensure prompt service to households in immediate need due to the disaster.

Fair Hearings

The question of fair hearings poses a troublesome issue. Normal fair hearing processing standards do not afford much relief to a disaster victim aggrieved by a State agency determination to deny it disaster food stamp assistance. At the same time, however, State agency staff are frequently strained to their limits during a disaster, and requirements for expedited fair hearings would not be administratively feasible.

Therefore, these rules propose that an aggrieved household be able to receive an immediate supervisory review of the determination. Households would still have the right to fair hearings in addition to the supervisory reviews. Requirements for fair hearing processing standards would not be altered for disaster applicants wishing a fair hearing.

Current Food Stamp Program Participants

Households previously certified under the ongoing Food Stamp Program may be adversely affected by a disaster. These households could suffer a loss of income, have their homes damaged, or have members injured, just like other households. To automatically deny them emergency food stamp assistance during a disaster would be inequitable. They consequently need to be able to apply for disaster food stamp assistance on the same basis as other households.

Under these rules, those households that participate in the regular Food Stamp Program, and who meet the same disaster eligibility criteria that all other households applying for disaster food stamps must satisfy, would be eligible for disaster food stamp assistance. Those households participating in the regular Food Stamp Program that do not meet the disaster eligibity criteria (e.g., food stamp recipients who are not adversely affected by the disaster) would be ineligible for disaster assistance.

For those households participating in the regular Food Stamp Program that also qualify for disaster assistance, a difficult matter arises. It would be desirable to subtract the benefits such households have received under the regular Food Stamp Program from the full disaster allotments they would otherwise receive for the same time period. However, in a disaster situation this could prove extremely difficult administratively, and could be highly subject to error. Regular food stamp certification records may not be readily accessible to disaster certification staff, and there may not be the necessary staff to match these records. Moreover, some households may not have received their regular ATP or coupon allotment due to the disaster. Therefore, these regulations propose that households file a statement with the State agency indicating whether the household currently receives food stamp benefits and, if so, the amount of those benefits. This statement may be verified by by the State agency prior to issuance of the allotment.

These regulations propose that when applying for a disaster declaration from FNS, State agencies would indicate whether or not it will be possible for them to "factor out" regular food stamp benefits for food stamp households that also qualify for disaster assistance. The State agency would be permitted, with FNS approval, to forego efforts to factor out regular food stamp benefits if this were determined to be the only practicable administrative alternative.

Transition to the Regular Program

Some households that received disaster benefits may subsequently apply for and be determined eligible for the regular Food Stamp Program. In such cases, the disaster certification period and the certification period under the regular Food Stamp Program could overlap. For example, a household could be certified for disaster food stamps from December 10 to January 10, while being certified for the regular program effective January 1. In this circumstance, there would be a 10-day period that is covered by both programs.

While the Department recognizes (as explained above) the potential administrative difficulties in attempting to "factor out" regular food stamp allotments as part of the disaster certification process, eliminating overlapping benefits for *new* applicants in the regular Food Stamp Program should be feasible. Accordingly, these rules propose that if a household receiving disaster food stamp benefits is subsequently determined eligible as a new participant in the regular Food Stamp Program, and if the certification periods overlap, then the portion of the disaster benefits that was provided for the overlapping period would be subtracted from the first normal monthly issuance under the regular program. For example, in the case cited above of the household certified for disaster assistance from December 10 to January 10 and also certified for the regular Food Stamp Program effective January 1, one-third of the disaster benefits would be subtracted from the regular January food stamp issuance. The Department is especially interested in comments on any administrative issues associated with this requirement.

Accountability

The proposed rule would mandate a post-disaster review of disaster certification activities. This would be accomplished by having the State agency select and review a sample of cases that had been certified for disaster issuance. FNS would determine the number of cases to be reviewed for each disaster. For cases in the sample, the review would: Examine the case data and all information on the application; determine the household's eligibility for disaster assistance; and ascertain whether any errors were made. The State agency would have the option of performing these reviews through its Management Evaluation or Quality Control staff, or other State agency staff qualified to conduct these reviews.

The data obtained from these post-disaster reviews would be used to formulate and implement corrective action, if warranted, so that disaster procedures are made more effective and efficient.

In addition, the fact that these audits would be conducted would be publicized by the State agency during disaster operations as a deterrent to abuse. Households would also be notified during the disaster certification interview that these audits would be conducted and that households would be held liable for any overissuances discovered in the course of post-disaster audit activities. In recognition of the fact that some disaster operations may be small and may not justify a post-disaster audit (especially if FNS has knowledge that disaster operations were relatively problem-free), FNS would have the authority to waive the requirement for a post-disaster audit in individual circumstances. Use of this authority by FNS would be limited to small scale disasters where FNS did not believe that an audit would be cost effective.

Other proposed measures to tighten accountability include a requirement that State agencies establish controls to detect and prevent duplicate food stamp disaster issuances, and a requirement that disaster food stamp recipients be issued ID cards with a disaster designation on the card. The ID cards would be used to identify recipients in retail stores and at food stamp issuance points, and would be distinguishable from the ID cards issued under the ongoing Food Stamp Program so that excessive numbers of ID cards would not be in use well after the disaster was past.

For the reason set forth in the preamble, it is proposed that Part 280 of 7 CFR be amended as follows:

1. Part 280, as added elsewhere in this issue, would be revised to read as follows:

PART 280—EMERGENCY FOOD STAMP ASSISTANCE FOR VICTIMS OF DISASTERS

Authority: Pub. L. 95-113, 91 Stat. 958, (7 U.S.C. 2011-2027) Pub. L. 93-288, 88 Stat. 143.

§ 280.1 General purpose.

This Part implements Section 409 of the Disaster Relief Act of 1974 and the temporary emergency provisions of the Food Stamp Act of 1977 in areas where the Food Stamp Program is in operation. Under the Disaster Relief Act, the President is authorized to declare a "major disaster" when requested to do so by the State or States involved in natural disasters. The Secretary of Agriculture is also authorized to independently evaluate these Presidentially declared disasters, when requested to do so by the State or States involved, to determine if they should also be declared disasters for food stamp purposes, authorizing distribution of emergency food stamps to households who are unable to purchase adequate amounts of food as a result of the disaster. The Secretary of Agriculture also has the authority under the Food Stamp Act of 1977 to authorize emergency food assistance if the affected area has not been declared a major disaster by the President. The Secretary of Agriculture can establish temporary emergency standards of eligibility for the duration of the emergency for victims of a disaster which disrupts commercial channels of food distribution if the households are in need of temporary food assistance and if commercial channels of food distribution have again become available to meet the temporary food needs of such households. In areas where the Food Stamp Program is not in operation, emergency food assistance need in a major disaster will be met as provided in regulations governing the Food Distribution Program, Part 250.

§ 280.2 Delegation for Administration.

(a) *Delegation to FNS.* By Executive Order 11795, the authority provided the President under the Disaster Relief Act of 1974 to determine the need for emergency food stamp assistance has been delegated to the Secretary of Agriculture. In addition, the Food Stamp Act of 1977 delegates to the Secretary the authority to establish temporary emergency eligibility standards to use during disasters. Within the Department, such authority is delegated to FNS which shall act on behalf of the Department in the administration of Section 409 of the Disaster Relief Act of 1974 and the temporary emergency provision of the Food Stamp Act of 1977. Except as provided in this Part, the regulations and procedures governing the administration of the Program shall remain effective throughout the period during which temporary emergency food assistance is being made available.

(b) *Delegation to State agencies.* The State agency shall be responsible for the administration of the temporary emergency provisions within the State, as authorized by FNS, including certification of households, issuance of emergency food assistance, control and accountability of coupons, conducting evaluations of disaster operations, and submitting accurate and timely reports of emergency food assistance issuance. Further, the State agency is responsible for developing and maintaining a plan of operation for disaster situations, subject to the standards in § 280.4.

§ 280.3 FNS disaster planning.

The Food Stamp Act of 1977 directs the Secretary to establish a food stamp disaster task force to assist States in implementing and operating the disaster program. The disaster task force shall be available to go into a disaster area and provide direct assistance to State and local officials.

(a) *National Disaster Task Force.* The FNS National Disaster Task Force shall assist the Regional Disaster Task Force in coordinating overall Food Stamp and Food Distribution Program disaster response activities and expediting approval of disaster designation requests and policy clarifications through the normal channels. FNS Regional offices will provide guidance to and coordinate with Federal and State disaster agencies directly involved in disaster situations. Contact shall be maintained between the National Office of FNS and the National Office of the Federal Emergency Management Agency (FEMA) and the Regional Offices of FEMA and the Regional Offices of FNS. The contact should include apprising FEMA of State agency requests for temporary emergency food stamp assistance, FNS disaster designations, the number of households assisted, and the food stamp dollar value provided.

(b) *Regional Task Force.* Each Regional Office of FNS shall establish a disaster task force. The Regional Disaster Task Force shall coordinate disaster activities at the State and local level, gather data, evaluate the need for emergency assistance, and provide information and/or recommendations to the National Disaster Task Force. It shall be responsible for: transmitting, with evaluation and request for concurrence, requests for designation of disasters to the National Disaster Task Force; mobilizing field and Regional assistance as needed; assuring accurate reports and monitoring of State agency activities; identifying operational problems and supplying needs; transmitting, with recommendations, requests for extension or close-out of disaster activities; maintaining State contacts and FEMA contacts; maintaining Regional disaster response plans; and working with the National Disaster Task Force on needed policy changes.

§ 280.4 State agency disaster planning.

(a) *Coordination and Liaison.* The State agency shall establish liaison with the individual in the Governor's Office responsible for disaster assistance coordination and with the corresponding individuals in the Federal Emergency Management Agency, the Department of Housing and Urban Development, Civil Defense, the American National Red Cross, the Salvation Army, and other disaster agencies. These offices can alert the State agency to potential disasters, provide assessment of destruction and the number of victims and their needs, and provide other assistance during disasters. The State agency shall request those disaster assistance agencies that have contact with households potentially eligible for emergency food stamp assistance during disasters to provide information on disaster eligibility standards and refer these households to the disaster food stamp program. If the disaster is limited in nature and does not meet the criteria for disaster designation by FNS, the State agency shall request disaster relief agencies that are providing assistance to affected households to provide information on, and refer potentially eligible households to, the regular Food Stamp Program.

(b) *Disaster Plan.* The State agency shall prepare and submit to the FNS Regional Office for approval, a Disaster Plan which shall be an attachment to the Plan of Operation as provided in § 272.2. The plan shall include:

(1) The identification of Federal and State government officials involved in coordination of disaster relief activities in the State who will function as key contact persons during a disaster, as well as the identification of the principal private disaster relief agencies in the State;

(2) Identification of local project area and State agency responsibilities in the event of a disaster;

(3) The designation of a State agency Disaster Coordinator and alternate;

(4) Procedures to prevent and identify duplicate food stamp issuance during a disaster;

(5) Procedures to conduct post-disaster review activity; and

(6) A certification that the State agency has developed the procedures or plans required by paragraph (c) of this section.

(c) *Other planning activities.* The State agency shall undertake further planning measures to prepare for a possible disaster. The State agency shall develop the following procedures or plans, which shall be subject to review during the annual FNS review of State agency administration and operations as prescribed under § 275.3(a):

(1) Procedures for promptly assessing the geographical limits of the areas in need of disaster food stamp assistance;

(2) Procedures for coordinating with Federal and State disaster relief agencies, local government officials, and private disaster relief organizations;

(3) Procedures for instructing caseworkers in implementing and operating the disaster Food Stamp Program;

(4) Procedures for informing the public during a disaster about the disaster procedures, including how to apply for benefits, household responsibilities, and post-disaster reviews; and

(5) Procedures for issuing food stamps during a disaster.

(d) *Instructions.* The State agency shall issue instructions and provide training to project area offices on the handling of disaster assistance operations to ensure prior understanding of the disaster procedures set forth in this Part and prompt action upon issuance of a disaster declaration. If it is determined that the regular Food Stamp Program can meet the food needs of households affected by a disaster, precluding an emergency disaster declaration by FNS, then applicant households affected by the disaster should be handled in accordance with the procedures found in Parts 273 and 274 of the Food Stamp Program Regulations.

§ 280.5 Disaster declaration procedures.

(a) *General Authority.* FNS shall determine the need for temporary food assistance for households which are victims of a disaster such as a storm, fire, flood, or other catastrophe when the conditions are severe enough to have both disrupted the commercial channels of food distribution, as defined in paragraph (b) of this section, and have affected a sufficient number of households such that the regular Food Stamp Program cannot respond to their temporary food needs (except that where emergency food stamp assistance is being provided to victims of a major disaster as declared by the President under the Disaster Relief Act of 1974, commercial channels of food distribution need not have been disrupted). Prior to a disaster determination, commercial channels of food distribution must be restored as defined in paragraph (b) of this section. The area authorized by FNS for emergency food coupon issuance may or may not have boundaries congruent with areas designated as a major disaster by the President or with food stamp project areas.

(b) *Commercial Channels of Food Distribution*—(1) *Disruption.* Any of the following conditions shall be considered a disruption of commercial channels of food distribution for disaster declaration purposes provided that the disaster has caused one or more of such conditions:

(i) Severely hampered community transportation to retail and wholesale food outlets;

(ii) Closing of retail and wholesale food outlets;

(iii) Significantly hampered delivery of commodities to food outlets;

(iv) Significant shortening of normal operating hours of food outlets which significantly restricts households' normal opportunities to purchase food supplies;

(v) Unusually heavy demand on food outlets to the extent that the normal opportunity to purchase food is significantly hampered due to households replacing food supplies damaged or destroyed by the disaster; or

(vi) Power failure which significantly restricts the operation of food outlets.

(2) *Restoration.* Commercial channels of food distribution shall be considered restored when conditions or operations have improved to the extent that households have reasonable access to food outlets.

(c) *Disaster Designation.* Conditions under which a sufficient number of households are affected so as to permit a disaster designation include, but are not limited to, one or more of the following:

(1) Damage has been caused of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act of 1974;

(2) Federal emergency assistance is needed to supplement State and local efforts to save lives and protect property, public health, and safety;

(3) Alternative certification and/or issuance procedures, physical facilities, and/or sites are needed to provide service on a mass scale that is beyond the capability of normal certification and issuance procedures, physical facilities, and/or sites; or

(4) Additional certification and/or issuance staff are needed to timely handle the volume of applicants.

(d) *Application for FNS Authorization to Conduct Emergency Operations.* When all or part of a food stamp project area, as defined in 7 CFR 271.2, has been struck by a disaster, there has been a disruption and restoration of commercial channels of food distribution (except that in the event of a Presidentially declared major disaster, commercial channels of food distribution need not have been disrupted), and the ongoing Food Stamp Program cannot respond to the temporary food needs due to the number of affected households, the State agency may apply to FNS for authorization to implement temporary emergency food stamp assistance procedures. This application shall be made as soon as possible, and may be made informally, by telephone or otherwise, to the Regional Disaster Task Force as soon as the need has been established. However, a written application with substantiating facts must be submitted to FNS as soon after the informal application as possible. This application must include the following items:

(1) The date the disaster began;

(2) A list of the project areas or a description of the geographical limits of parts of project areas in need of assistance;

(3) A determination that distribution of federally donated commodities is or is not necessary in any part of the disaster area;

(4) A determination, with substantiation, that commercial channels of food distribution have been disrupted and restored (except that if the area has been declared a major disaster by the President, only substantiation that commercial channels of food distribution are available need be provided);

(5) A determination, with substantiation, that households residing within the affected parts of a project area or areas are in need of emergency food stamp assistance;

(6) A determination, with substantiation, that the food needs of these households cannot be met by the ongoing Food Stamp Program;

(7) An estimate of the numbers of eligible households in need of assistance;

(8) An assessment of the availability and accessibility of food stamp certification and issuance sites in the affected area;

(9) A determination that temporary certification and/or issuance arrangement are or are not necessary, and a description of any such proposed arrangements;

(10) An assessment of the availability and accessibility of FNS authorized food outlets in the affected area;

(11) An estimate of how long it will take to accept and process applications from the victims of the disaster (i.e., the estimated length of the authorization period);

(12) A recommendation of how long the benefit period should be, either a half-month or a full month;

(13) Whether or not the State agency plans to reduce disaster food stamp allotments issued to households certified under the regular food stamp program by the amount of the household's regular monthly food stamp allotment, including a description of how the State agency plans to accomplish this or a justification of why it is not administratively practicable;

(14) Information on the use of a disaster relief agency, if any, with which the State agency wants to cooperate in administering emergency food stamp assistance. A disaster relief agency is a public or private agency designated by the State agency and authorized by FNS to perform specified functions in connection with certification for and distribution of emergency food stamps during a disaster. The State agency must specify the functions which it intends to delegate to the disaster relief agency, and the specific geographical areas in which such functions will be performed by the agency; and

(15) If more than one State agency, including an Indian tribal organization administering the Food Stamp Program, have responsibility over the affected disaster area, separate applications for a disaster authorization must be submitted by each agency. However, the State agencies involved should cooperate closely to minimize the possibility of duplicate issuances.

(e) *FNS Authorization*—(1) *Approval.* If the State agency application for a disaster designation is approved, FNS will authorize the State agency to use disaster certification and issuance procedures set forth in this Part, specifying the project areas, or parts of project areas, where such procedures are authorized. This authorization will be made in person or by telephone and will be followed by written confirmation.

(2) *Denial.* If the application is denied by FNS, FNS will notify the State agency immediately in person or by telephone, confirming this in writing. The State agency may request FNS to review the decision if additional information is available to substantiate the request for authorization.

(3) *Temporary Certification and Issuance Arrangements.* FNS approval is required of the temporary certification and issuance arrangements, if any, proposed by the State agency in applying for a disaster designation. If there is a need for the assistance of a disaster relief agency in providing temporary food assistance during a disaster, FNS will authorize the disaster relief agency designated by the State agency, specifying the functions which it may perform in connection with certification for and distribution of emergency food stamps.

(4) *Period of Authorization.* (i) FNS will specify the benefit period based on an evaluation of the period requested by the State agency and on the circumstances of the particular disaster. This period shall be for either a half month or one month. Authorization for an initial benefit period shall not exceed one month.

(ii) FNS shall authorize a period of from 3 to 30 days needed by the State agency for processing disaster applications. This period may be of shorter duration than the benefit period defined in paragraph (e)(4)(i) of this section, but it may not exceed the benefit period.

(iii) The State agency may apply to FNS for an extension of either or both of these two periods. Such an extension may be authorized if FNS determines that emergency food stamp assistance is necessary beyond the original period or that additional time is required by the State agency to process disaster applications. This request for an extension may be made informally, by telephone or otherwise, with the Regional Disaster Task Force as soon as the need has been established. However, a written request with substantiating facts for an extension must be submitted to FNS as soon as possible after the informal request for an extension has been submitted.

(f) *Liaison.* In the event of a disaster, whether victims are aided through the ongoing Food Stamp Program or disaster procedures, State agency liaison with the Federal Emergency Management Agency (FEMA) and disaster assistance agencies is essential to ensure the prompt distribution of food stamps to all eligible disaster victims. If the affected area is declared a major disaster by the President, the State agency shall cooperate with the Federal Coordinating Officer (FCO) of FEMA and the State Coordinating Officer. The FCO shall be contacted by FNS before a determination of the need for temporary emergency food stamp assistance is made in order to coordinate effectively regarding the designation of an area as in need of emergency food stamp assistance and the establishment of food stamp certification and issuance points. Initial planning should include, to the maximum extent practicable, the location of certification and/or issuance services at any FEMA one-step centers that are established.

§ 280.6 Eligibility for emergency food stamp assistance during disasters.

(a) To be eligible for emergency food stamp assistance during a disaster, a household must meet all of the following criteria:

(1) At the time the disaster struck, the household shall have been residing within the geographical area authorized for disaster procedures. Such a household may be certified for disaster issuance even though it presently is occupying temporary accommodations outside of the disaster area (although it would need to come to the certification site to be certified for disaster food stamp assistance).

(2) The household will purchase food and prepare meals during the disaster benefit period. A household residing in a temporary shelter which is providing all its meals shall be ineligible.

(3) The household has experienced at least one of the following adverse effects of the disaster: loss or inaccessibility of income; inaccessibility of liquid resources; or disaster related expenses.

(i) Loss or inaccessibility of income involves a reduction or termination of income or a significant delay in receipt of income. This could occur, for example, if a disaster has caused a place of employment to close or reduce its work days, if pay checks or other payments are lost or destroyed or if there is a significant delay in the issuance of paychecks or other payments. It could also occur if the work location is inaccessible due to the disaster.

(ii) Inaccessibility of liquid resources includes situations in which the financial institutions in which the household has its resources are expected to be closed due to the disaster for most of the disaster benefit period, or the household is otherwise unable to reach its cash resources and is not expected to be able to reach its resources for most of the disaster benefit period.

(iii) Disaster related expenses shall include only those circumstances where the household has paid or is expected to pay during the disaster benefit period for one of the following expenses (and the household does not expect to receive full reimbursement for the entire expense during the disaster benefit period): expenses to repair damage to the household's home or other property essential to the employment or self-employment of a household member; expenses for temporary shelter if the household's home is uninhabitable or the household cannot reach its home; expenses for moving out of an area evacuated due to a disaster; expenses related to protecting property from disaster damage; medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death). Other expenses shall not be considered.

(4) The household's level of take-home pay for the disaster benefit period, when added to its cash resources (cash on hand and accessible funds in checking and savings accounts), and when disaster-related expenses are deducted from this total, is less than or equal to the food stamp maximum income limit (disregarding the earned income deduction) for its household size. The maximum income limit shall be computed by increasing the food stamp net income limit for the appropriate household size, as prescribed by § 273.9(a), by the standard deduction and the maximum shelter/dependent care deduction, for households that do not contain an elderly or disabled member. (The medical deduction for elderly and disabled households, the earned income deduction, and the unlimited shelter/dependent care deduction for elderly and disabled households shall not be used in computing the maximum gross income limit.) FNS shall supply all State agencies with tables showing the maximum gross income limits by household size.

(i) Take-home pay includes the wages a household actually receives after taxes and other payroll withholding is taken out, the assistance payments or other unearned income a household receives, and self-employment income earned after personal income and social security taxes as well as costs of producing the self-employment income are subtracted.

(ii) Income shall be counted if it has already been received in the benefit period, or if it is reasonably certain to be received during the disaster benefit period.

(iii) All cash resources (cash on hand and all funds in savings and checking accounts) shall be counted unless the State agency determines that such funds will be inaccessible to the household for most of the disaster benefit period.

(iv) Allowable disaster-related expenses are expenses to repair damage to the household's home or other property essential to the employment or self-employment of a household member; expenses for temporary shelter if the household's home is uninhabitable or the household cannot reach its home; expenses from moving out of an area evacuated due to a disaster; expenses related to protecting property from disaster damage; and, expenses due to a disaster-related personal injury (including funeral and burial expenses in the event of a death caused by the disaster). These expenses are identical to the expenses which may be used to satisfy subparagraph (3) of this paragraph.

(v) For an expense to be deductible, the household must have paid or expect to pay for the expense during the disaster benefit period. Incurring the expense does not render it deductible if the household will not pay for it until after the disaster benefit period is over. If the household has received or is reasonably certain to receive a reimbursement for all or part of the expense during the disaster benefit period, then only the net expense to the household shall be deductible. If reimbursement is expected but it is not reasonably certain that it will be provided during the disaster benefit period, then the full amount of the expense shall be deductible.

(vi) Certification periods shall coincide with the disaster benefit period. If the benefit period is one month, then income over this full month period shall be counted, disaster-related expenses that are paid or expected to be paid over this full month period shall be deducted, and the monthly food stamp maximum income limit for the appropriate household size shall equal the disaster eligibility limit. If the disaster benefit period is for one half month, income over the half-month period shall be counted, disaster-related expenses paid or expected to be paid over this period shall be deducted, and the disaster eligibility limit shall be one half of the monthly food stamp maximum income limit. For example, if FNS declares the disaster benefit period to be from the 3rd of November to the 20th of November, and a household applies for disaster assistance on the 10th of November, the household's certification period shall be from November 3rd to 20th and its circumstances over this period shall be considered. The full amount of cash resources shall be counted regardless of the length of the disaster benefit period.

(vii) Applicant households must provide estimates of total take-home pay, cash resources, and allowable disaster-related expenses. The State agency is not required to request itemization of individual expenses, or of different sources of income or resources.

(b) FNS may, in certain disaster situations where circumstances warrant, establish eligibility standards that differ from those set forth in paragraph (a) of this section. These standards may be established without regard to Section 4(c) of the Food Stamp Act of 1977 or Section 553 of Title 5 of the United States Code.

(c) The regular Program shall continue to operate during the disaster benefit period and shall continue to process applications and make eligibility determinations in the normal manner in accordance with Parts 273 and 274 of the Food Stamp Program Regulations. If an applicant household does not meet the eligibility standards described in paragraph (a) of this section, the household shall be informed of the potential availability of benefits under the regular Program.

§ 280.7 Application processing.

(a) *Certifying Agency.* The State agency shall determine the eligibility of each applicant household for emergency food stamp assistance during a disaster. State agency certification personnel, as well as volunteers and other State agency personnel designated by the State agency, may determine eligibility of affected households. A disaster relief agency may also determine the eligibility of applicant households. Any such disaster relief agency must be designated by the State agency and approved by FNS. The State agency should be flexible in setting up certification and issuance points and is encouraged to use the disaster relief centers established by the Federal Emergency Management Agency to the greatest extent possible. Other sites may be used, including regular certification and issuance offices, if accessible to the affected population. Alternate issuance sites must provide adequate security for the storage and issuance of coupons.

(b) *General standards.* (1) To apply for food stamps under this part, a household shall complete and submit a short form application, be interviewed, and provide limited verification as specified in paragraph (g) of this section. The State agency may use group sessions to initially screen applicant households under the eligibility criteria referenced in § 280.6, explain household rights and responsibilities, and explain how to complete an application.

(2) The State agency shall act promptly on all applications. The State agency shall provide eligible households that complete the emergency assistance application process an opportunity to obtain benefits the same day unless restrictions such as curfews make it impossible for the State agency to meet this standard. In these situations, households determined eligible shall be provided an opportunity to obtain benefits no later than the day following the date the application was filed.

(c) *Application Form for Emergency Assistance.* (1) State agencies may either use an application form designed by FNS or their own forms (with prior FNS approval). The application for temporary emergency assistance shall, at a minimum, include:

(i) The name of the head of the household and the members of the household, and the permanent and temporary address of the household;

(ii) The total take-home pay of all household members which has been received in the disaster benefit period or which, for households whose income flow has not been significantly interrupted by the disaster, is reasonably certain to be received during the benefit period;

(iii) A statement as to whether or not the household has experienced at least one of the following: expenses to repair damage to its home or other property essential to the household's employment or self-employment; expenses due to a disaster-related personal injury or death; expenses for temporary shelter if the household's house is uninhabitable or the household cannot reach its home; expenses from moving out of an area evacuated due to a disaster, expenses in protecting property from disaster damage; loss or inaccessibility of income; or inaccessibility of cash resources that is expected to continue for most of the disaster benefit period;

(iv) A statement as to whether or not the household purchases and prepares its own meals;

(v) A statement as to whether or not the household's identity and residency can be verified;

(vi) The total actual or estimated disaster-related expenses, provided the expense has been paid or is expected to be paid during the disaster benefit period and is not covered by a reimbursement which has been received or is expected to be received during the disaster benefit period;

(vii) The total amount of cash resources (cash on hand and funds in checking and savings accounts);

(viii) A statement as to whether the household is currently receiving benefits under the Food Stamp Program and, if so, the monthly amount of such benefits,

(ix) A description in understandable terms and in prominent and boldface lettering of the civil and criminal provisions and penalties for violations of the Food Stamp Act, including information concerning post-disaster reviews which will determine the correctness of disaster certifications;

(x) The signature of a responsible member of the household or authorized representative attesting to the fact that the information on the application form is correct and that the information may be verified further in a post-disaster review. If a person wishes to act as an authorized representative, he or she shall be designated in writing by the head of household, spouse, or another responsible member of the household to act on behalf of the household in making application for emergency assistance or in obtaining or using food stamps; and

(xi) An authorization section for State agency use showing the disposition of the application. If approved, the application shall indicate the amount of the allotment to be issued.

(2) The State agency shall ensure that either a supply of application forms or a copy suitable for duplication is available in each project area at all times.

(d) *Filing an Application.* To file an application for emergency food stamp assistance, a household must submit a completed form to a certification site in person or through an authorized representative. The State agency shall document the date the application was received. In order to be processed under disaster procedures, the household must file the application during the period in which the State agency has been authorized by FNS to accept applications for disaster food stamp assistance. Households wishing to apply outside of this period shall be processed according to the procedures in Parts 273 and 274.

(e) *Household Cooperation.* To determine eligibility, the application must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified as required in paragraph (g) of this section. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. Refusal to cooperate shall be as defined in § 273.2(d).

(f) *Interviews.* (1) All applicants shall have interviews. The State agency is encouraged to use screening techniques prior to the interview to identify those households which do not meet required eligibility criteria such as having been adversely affected by the disaster. The interview shall be conducted as an official discussion of household circumstances. However, it shall be designed to quickly process the application and not impede disaster operations. The interview may be conducted by State agency certification workers, as well as by volunteers, and other non-State agency personnel (such as representatives of an authorized disaster relief agency) designated by the State agency. The individual interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative. The household may be accompanied to the interview by anyone of its choice. The interviewer shall review the information that appears on the application and resolve unclear or incomplete information with the household.

(2) The interviewer shall advise the household either orally or in writing of the disposition of its application, its rights and responsibilities, when its certification period for emergency assistance ends, and of the ongoing Food Stamp Program. In addition, the interviewer shall orally advise the household of the civil and criminal provisions and penalties for violations of the Food Stamp Act and of the fact that the household may be subject to a post-disaster review. If the household also wishes to file an application for the ongoing Program, the interviewer shall advise the household either orally or in writing of the address and telephone number of the appropriate office. The State agency shall inform each household certified as eligible for emergency food stamps of the proper use of food stamps.

(g) *Verification.* To expedite the certification for emergency assistance, the State agency shall waive the verification required by § 273.2(f) and use the procedures specified in this paragraph. The applicant's identity and residence at the time of the disaster shall be verified. Examples of acceptable verification which the household may provide include, but are not limited to, a driver's license, work or school ID, voter registration card or birth certificate. In addition, residence in the disaster area may be verified by rent receipts and utility bills. Since these documents can be destroyed or inaccessible during a disaster, residency may also be verified, when necessary, through sources such as telephone books or city directories. The State agency is encouraged to utilize maps and transparent overlays with disaster boundaries marked to determine if a household's residence falls within the prescribed boundaries. The State agency may use a collateral contact as a source of verification if the household's identity and residency cannot be verified through documentary evidence or if the use of a collateral contact would expedite the household's certification. In some unusual situations (such as in the case of a household that arrived in the area just prior to the disaster), verification of residency may not be possible. If in such situations residency cannot readily be verified despite the efforts of the State agency and the household, the household shall not be denied for this reason.

§ 280.8 Miscellaneous Provisions Relating to Household Eligibility and Benefit Levels.

(a) *Benefit Calculation.* Households meeting the eligibility criteria in § 280.6 shall receive the full coupon allotment for their household size as authorized by the basis of coupon issuance tables. Coupon allotments shall be a half-month or full monthly allotment, whichever coincides with the disaster benefit period.

(b) *Period for Processing Applications.* No emergency food coupon allotments shall be authorized after the expiration of the period for which the State agency was authorized to process and approve applications for emergency food stamp issuance. However, if an authorization period is extended by FNS beyond the original designation, and the extension goes beyond the end of the original disaster benefit period, FNS may authorize the State agency to permit certified households who have already received emergency coupon allotments to apply for recertification and receive additional coupon allotments for an additional benefit period if they still meet the disaster eligibility criteria. A household applying for recertification must again submit an application and be interviewed. At recertification, the State agency does not need to re-verify identity and residency unless it believes these items to be questionable. If an extension is granted, the State agency shall issue a press release notifying households that the disaster authorization period has been extended. If FNS has authorized households who received emergency coupon allotments to be recertified, the press release shall advise households of where they may apply for additional emergency benefits and the date by which a household must file an application to receive extended benefits. The State agency may also directly notify currently certified households of the continued assistance.

(c) *Certification Notices.* The State agency shall advise applicant households of the disposition of their applications. If an application is approved, the household shall be advised of the amount of the allotment and the period the benefits are intended to cover. If the application is denied, the State agency shall explain the basis for the denial. However, the written notification requirements in § 273.10(g) shall be waived. The notifications State agencies are required to give to applicant households may be given orally or in writing at the State agency's discretion.

(d) *Fair Hearings.* Households denied disaster benefits may request fair hearings in accordance with § 273.15. Households requesting fair hearings shall be offered immediate supervisory reviews of their cases due to the time that is likely to pass before a fair hearing decision can be rendered. The supervisory review shall be in addition to the fair hearing and shall not replace the fair hearing.

(e) *Transition to the Regular Food Stamp Program.* Households which are issued emergency food stamps and which are subsequently determined eligible as new participants in the ongoing Food Stamp Program shall have their emergency food stamp benefits applied against their benefits under the regular Program if the disaster certification period and the certification period for ongoing benefits overlap. The State agency shall calculate the benefits to be issued under the regular Program as follows:

(1) The number of days which overlap the disaster certification period and the certification period for ongoing benefits shall be determined.

(2) Disaster benefits shall be pro-rated over the number of days in the disaster period to determine disaster benefits issued on a daily basis.

(3) The amount of the coupon allotment to be issued under the regular Program shall be offset against the amount of overlapping disaster benefits determined in (2) above. For example, a household which has been certified for emergency assistance from May 5th through June 4th and is certified as a newly participating household in the regular food stamp program for June

would have the disaster benefits for the overlapping days (June 1 through 4) subtracted from its regular June allotment prior to actual issuance.

(f) *Treatment of Households Certified Under the Ongoing Food Stamp Program.* (1) Household currently certified for the ongoing Food Stamp Program under Part 273 of the Food Stamp Program Regulations may also be eligible for temporary emergency food stamp assistance during disasters. These households shall be allowed to apply for disaster food stamp assistance and their eligibility shall be determined in the same manner as would be done for any other disaster victim, in accordance with § 280.6. The State agency shall, to the extent practicable, reduce the disaster coupon allotment issued to households that are currently certified for the ongoing Program by the amount of regular food stamp benefits issued to the same household under the ongoing Program for any part of the disaster benefit period, except that if the household's food has been damaged by the disaster and the household must replace the food, then the disaster coupon allotment shall not be reduced by the amount of benefits issued under the ongoing Program. To the extent that it is not practicable to determine, verify or otherwise take into account ongoing Program benefits, the State agency may with the approval of FNS, issue full disaster coupon allotments to households eligible for disaster assistance who are certified under the ongoing Program without doing so.

(2) A household which requests a replacement for an ATP or coupons that it had received under the ongoing Program but which were subsequently destroyed in the disaster, or for food destroyed in the disaster that was purchased with coupons issued under the ongoing Program, shall be referred to the certification office which has responsibility for the ongoing Program, and shall be handled by the ongoing Program in accordance with §§ 273.11(g) and 274.2(g). However, households shall not be given replacements if they have received or will receive disaster food stamp assistance for the same period.

(3) Households certified under the regular Program procedures who report changes as required in § 273.12(a) during the application process for emergency assistance shall be referred to the ongoing Program. The household is responsible for reporting the required information directly to the office which handles its regular case.

(g) *Controls to Minimize Duplicate Participation During Disasters.* The State agency shall develop a system to detect duplicate applications for disaster food stamp benefits. The method developed by the State agency may include an exchange of case index cards or lists of certified disaster households between the appropriate certification and issuance sites utilized in the disaster operation. The State agency may also, to the extent practicable, employ computer checks, address checks, and telephone calls to prevent households from receiving duplicate disaster food stamp benefits.

(h) *Identification.* The State agency shall issue an identification card (ID) marked with the word "disaster" or some similar designation to households certified for disaster food stamp issuance. The ID card will serve to identify the household at the issuance point or in a retail food store as a legitimate food stamp participant.

§ 280.9 Issuance of Emergency Food Coupons.

(a) *Issuance Arrangements.* Emergency food coupon allotments may be issued by the normal procedure in effect in a project area if the opportunity-to-participate standards in § 280.7(b) can be met. Such issuance arrangements may not be practical because of the effects of the disaster, and the State agency, with FNS approval, is encouraged to make temporary arrangments during the emergency period to facilitate issuance to disaster victims. Over-the-counter issuance may be the only issuance method which may be able to handle the volume of applicants and provide same day issuance. Any assignment of issuance functions shall clearly delineate the responsibilities of the State agency and issuance agent. The State agency remains responsible for ensuring that assigned duties are carried out in accordance with the issuance requirements in Part 274. This includes the establishment of controls and security procedures to safeguard coupons during disaster issuance operations. As with normal issuance procedures, arrangements for issuance of emergency food coupons must permit the timely issuance of coupons while affording a reasonable degree of coupon security. Such temporary arrangements shall in no way affect the accountability and liability of the State agency for coupons as provided for in Parts 274 and 276. The State agency shall keep records of such emergency participation separate form the regular issuance documents except for the preparation and verification of Form FNS-250, Food Coupon Accountability Report, and Form FNS-256, Monthly Report of Participation and Coupon Issuance.

(b) *Reporting.* (1) In every State where emergency food stamp assistance is authorized, emergency food coupons allotments shall be reported and accounted for, in the same manner as other authorized issuances on Form FNS-250. Participation and coupon issuances shall be reported on Form-256. Further, the State agency shall report on Form-292, Report of Coupon Issuance for Disaster Relief, the total amount of such allotments and the number of persons certified for emergency food stamp assistance. Form FNS-292 shall be submitted to FNS by the FNS by the State agency as soon as possible but no later than the 45th day following the close of the designated disaster period.

(2) The Federal Coordinating Officer of the Federal Emergency Management Agency shall be provided a report, on as needed basis, which includes the estimated program cost, project approvals for temporary emergency assistance, number of applications received, number of applications approved and the food stamp dollar value provided.

(3) Additional information on emergency coupon issuances and participation shall be provided to the FNS Regional Office upon request.

§ 280.10 Monitoring post-disaster reviews.

(a) *State Agency Responsibility.* (1) The State agency shall implement and maintain proper controls over the certification of disaster victims for emergency food stamp assistance while disaster operations are in effect.

(i) Household information shall be maintained in an orderly fashion, clearly documenting the certification and issuance actions by the State agency.

(ii) Supervisory personnel shall closely monitor the disaster program, identifying problem areas for immediate corrective action. These include, but are not limited to, problems with crowd control, work flow, physical facilities, media information, and prevention of multiple issuances.

(2) The State agency shall conduct a post-disaster review of disaster certification activities, selecting and reviewing a sample of cases certified for disaster issuances. FNS will determine the number of cases to be reviewed on an operation by operation basis. The State agency may elect to review additional cases. The review of certified cases shall include a case record review; an interview with the participant; verification of information; a determination of eligibility for disaster assistance; and an analysis of error. The State agency may choose to perform the required reviews through the use of

Management Evaluation or Quality Control Staff, or other State agency personnel qualified to conduct these reviews. FNS may exempt a State agency from the requirement to conduct post-disaster reviews in a particular area or areas if, due to such factors as the limited volume of disaster issuances in the area, FNS believes that reviews are not warranted.

(3) The State agency shall utilize the case review information to formulate and implement corrective action to improve disaster certification procedures. State agencies shall establish claims in accordance with § 273.18 against any household that received more disaster assistance than it was entitled to receive. The State agency shall restore lost benefits to households which were caused by an error of the State agency as required by § 273.17.

(b) *FNS Responsibility.* The Regional Disaster Task Force shall establish procedures for monitoring and evaluating disaster operations conducted by the State agency. FNS will review on-site operations during the period authorized for processing applications and shall examine the case review information and corrective action formulated by the State agency.

(Catalog of Federal Domestic Assistance Program, No. 10.551 Food Stamps)

Dated: January 9, 1981.

Robert Greenstein,

Administrator.

[FR Doc. 81-2650 Filed 1-26-81; 8:45 am]

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7 CFR Parts 272, 273, and 274

[Amdt. No. 190]

Replacement of Lost or Stolen Food Stamp Authorizations, and Replacement of Nondelivered, Stolen or Destroyed Coupons

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rulemaking establishes procedures under authority of the Food Stamp Act 1977, as amended, (Pub. L. 95-113) which would modify current Food Stamp Program regulations regarding the replacement of lost or stolen food stamp authorizations (ATP's) and nondelivered, stolen, or destroyed food coupons. The proposed amendments also incorporate new provisions allowing the replacement of certain food losses through the issuance of supplemental benefits. These modifications are proposed to reduce losses resulting from fraudulent or erroneous ATP or coupon replacements.

DATE: Comments must be received on or before March 30, 1981, in order to be assured of consideration. After reviewing all comments, the Department will publish final regulations.

ADDRESS: Comments should be submitted to Alberta Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C., 20250. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 500 12th Street, SW., Washington, D.C. Room 698.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Regulations and Policy Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250; (202) 447-9075.

The Draft Impact Analysis is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedure established in Secretary's Executive Order 12044, and has been classified as "not significant".

The proposal has been reviewed with regard to the requirements of Pub. L. 96-354. Robert Greenstein, Administrator of the Food and Nutrition Service, has certified that this proposal does not have a significant economic impact on a substantial number of small entities. The provisions control the issuance of replacement authorization cards and food stamp coupons where authorization cards and food stamps are reported stolen, lost, or destroyed. Requirements are not placed on small businesses or small organizations. There are requirements proposed on State agencies, and to the extent that county governments operate the Food Stamp Program, some requirements would be placed on them. However, the requirements, such as limitations on the numbers of replacements and the circumstances under which replacements can be issued, do not have a significant economic impact on local governments.

Introduction

The Department is concerned with minimizing possibilities for fraud and error in the Food Stamp Program. With this in mind, the Department has re-examined procedures for the replacement of ATP's and coupons which are lost, stolen or destroyed. Given the number and value of replacement issuances, and indications that abuse has occurred in some areas, the Department has decided to propose substantial changes in procedures governing replacements.

The Department proposes to authorize the replacement of lost, stolen, or destroyed ATP's or coupons within limits that restrict opportunities for fraud and abuse. This proposed rulemaking addresses those restrictions by establishing revised policy regarding the conditions under which ATP's and coupons may be replaced.

In developing this proposed rule, the Department focused both on ways in which replacement issuances could be controlled and the development of procedures that are responsive to instances of true participant need and feasible for State agencies.

Replacement of Lost or Stolen Food Stamp Authorizations (ATP's)

Background

As a result of the increased Federal involvement in the issuance process (since 1974 USDA has paid half of the States' issuance costs) the Food and Nutrition Service published Instruction 734-2: Machine Issuance and Authorization to Purchase (ATP) System Procedures and Controls. This instruction included guidelines for State and local agencies to follow when issuing over-the-counter ATP's as replacements for ATP's reported lost, stolen, or undelivered in the mail. The instruction mandated that determinations be made that sufficient time had elapsed for a normal mail delivery to be completed and that the household was certified. A signed affidavit stating that the original ATP would be returned if recovered by the household was also required. Finally, certification workers were warned to be alert for households requesting repeated ATP replacement. Consideration was to be given to other means of coupon delivery after two consecutive reports of nondelivery. Regulations issued pursuant to the Food Stamp Act of 1977 did not drastically alter the provisions of Instruction 734-2. In addition to those noted above, regulations specified that the definition of "sufficient time for ATP delivery" would not exceed 5 days.

In recent years the number of replacement requests has grown in some metropolitan areas. While the intent of the regulations regarding replacements was to permit participants to get prompt assistance, it can be difficult to both guarantee immediate replacement and provide adequate safeguards to prevent duplicate issuance in urban areas with massive caseloads. In order to lessen the opportunity for fraud and theft in these areas, the Department believes that additional safeguards must be built into the ATP replacement system. Therefore, this proposal would modify the regulations as they relate to ATP replacement in order to reduce the number of stolen and fraudulently redeemed ATP's.

The proposed regulations would establish three limitations on the issuance of replacement ATP's reported as lost or stolen prior to receipt: (1) A specific timeframe for requesting replacements; (2) A specific time period for making replacement issuances; and (3) A limitation on the number of times replacements could be requested by a given household prior to initiation of an alternate issuance system. The proposal also addresses State actions in instances where there is documentation of fraud. Each of these limitations is discussed in greater detail below.

FNS is currently involved in two different alternate ATP issuance projects in New York and Pennsylvania (Philadelphia and Pittsburgh). In New York City, which had a serious ATP replacement problem prior to implementation of the alternative system, a "Rapid Access System" is being tested that provides prompt data for use in determining whether a participant's request for ATP replacement is legitimate. In Pennsylvania, the State and the Department are testing a project involving the direct delivery of ATP's to issuance outlets where they will be picked up and transacted by participants. In the first month of operation, there were no replacements at all issued in the Pennsylvania test districts. In New York City, the number of replacements has dropped sharply and fraudulent duplicate issuance has been severely curtailed. These test projects may suggest additional approaches to handling replacement ATP's.

Timeframe for Claiming Nonreceipt

Limitations established in current regulations provide, among other conditions, that an ATP replacement will only be issued if the original ATP loss is reported in the period for which the ATP was intended to be used.

The Department plans to retain this requirement. Language is being added to clarify that households which are scheduled to receive their ATP's on the 25th of the month or later will have 20 days to request replacements. This 20 day period coincides with the 20 day validity period given to ATP's issued after the 25th and is considered sufficient to allow a participant household to realize the loss and request a replacement.

Timeframe for Replacement Issuance

Current regulations do not specifically mandate a definite timeframe for the replacement of an ATP reported lost or stolen. Aside from the reference to ensuring that sufficient time has elapsed for delivery, no requirement is stipulated. The regulations do state, however, that "sufficient time" shall not exceed 5 days. In some areas, replacement is now granted immediately, and often without investigation as to whether the participant has already transacted the original ATP. This lack of confirmation makes it difficult to detect replacement requests that are fraudulent.

To correct this problem, the Department proposes that State agencies have up to 10 days to issue replacements after a request is made by the household. The 10 day period would allow the participant in need of replacement to receive such replacement without undue delay, while enhancing the ability of States and/or project areas with appropriate systems to detect fraudulent and/or erroneous duplicate issuance of ATP's by ascertaining whether the original ATP has been transacted. Ten days should give many States or project areas without sophisticated systems enough time to check whether the original ATP has been transacted.

Initiation of an Alternate Issuance System

Some households have reported that they did not receive their ATP several times, requesting replacement ATP's on each occasion. To forestall the possibility of continued loss, whether it stems from repeated theft of the household's ATP or from fraud, the Department is proposing that an alternate ATP delivery system be employed for a particular household after a second replacement request is made within a 6 month period by that household. This would allow participants an opportunity to obtain replacements when the need arises, yet control duplicate issuances through the use of an alternate issuance system such as direct pickup or certified mail. A single loss could result from an isolated incident, but two losses in this 6 month period would indicate the need for an alternate ATP delivery system. The State agency would keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency could return the household to the regular issuance system when it found that the circumstances leading to the losses had changed and the risk of loss had lessened.

Replacement of ATP's

As noted above it is a goal of this rulemaking to initiate new provisions for building additional safeguards into the ATP replacement system. ATP replacement is addressed in two categories, i.e., ATP replacement for losses occurring prior to receipt and replacement for ATP's which are stolen or destroyed after receipt. The Department recognizes that households have little control over the nondelivery of mail and that nonreceipt of an ATP or coupons creates hardships.

The Department believes losses of ATP's after receipt by the household through theft or destruction are subject to greater control by the household and should be infrequent. Accordinlgy, these rules propose specific limits on the number of times ATP's or coupons may be replaced when they have been stolen or destroyed after receipt. The Department proposes that a household be entitled to receive only one replacement in any 6 month period for either ATP's or coupons destroyed or stolen subsequent to receipt. In this proposal the Department has limited the opportunity for overissuances while providing relief to certain participants who suffer actual losses. The rules also propose that there be no replacement for ATP's or coupons misplaced or lost after receipt. The Department believes it is the responsibility of each household to avoid simply misplacing or losing ATP's or coupons. Current rules are silent on the issue of ATP's misplaced or lost after receipt. The Department is especially interested in comment on this matter.

Action in Instances Where There Is Documentation Indicating Fraud

The Department is proposing new procedures to be used by State agencies in those instances of reported loss where fraud is suspected. The first procedure would require States to withhold a replacement ATP when the State has documentation indicating that the replacement request is invalid. This approach is dependent on a "front end" capability to detect fraud such as the ability to verify that the original ATP has been transacted by the household rather than stolen or lost in the mail. For States without this capability, replacement ATP's would be issued upon request if the household signs a statement attesting to the loss. The statement would warn the household of the legal consequences of intentionally misstating the facts. States would continue to be required to determine the cause of overissuances and to seek to recoup or otherwise recover losses resulting from fraud on the part of the household. This approach requires reliance on post-issuance activities currently in effect including reconciliation, fraud hearings systems, and claims processing systems.

Replacement of Nondelivered, Stolen or Destroyed Coupons

For purposes of replacement, coupon losses have generally been divided into two categories. The first category covers those coupons which are lost in the mail prior to household receipt. Such coupons have generally been replaced on request, with the household stating that it would return the original issuance should it be received. The regulations implementing the 1977 Act attempted to tighten up this replacement policy by requiring States to use an alternative delivery system for those households reporting two consecutive mail issuance losses.

The second category covers those lost subsequent to household receipt. Prior to the 1977 Act such coupon losses were regarded as an individual disaster or casualty loss. In determining the basis of issuance for the replacement allotment, the previous purchase requirement was considered a hardship or "unusual expense" deduction from household income.

The Department expanded this rule in the Food Stamp Certification Handbook (FNS-732-1) to cover food coupons or foods purchased with coupons which were lost, stolen, or destroyed in an individual disaster. The household could request a second allotment of coupons during the month in which the mishap occurred. After verification of the reported loss, the eligibility worker could process the replacement.

The October 17, 1978, rulemaking (43 FR 47864) which promulgated provisions of the Food Stamp Act of 1977 tightened these procedures by requiring a police report to verify the theft of coupons, by allowing replacement only for stolen or destroyed coupons, by not replacing coupons lost or misplaced by the household, and by removing the provision related to food replacement.

Nevertheless, the Department is concerned over continued coupon losses and believes further restrictions are necessary to reduce mail theft losses and to reduce the potential for fraudulent replacement requests. The proposed rulemaking, therefore, would limit those circumstances and conditions under which replacement coupon issuances can be obtained.

The basic limitations related to the time period for requesting a replacement based on nonreceipt, the timeframe for replacement issuance, and the use of an alternate issuance system which are proposed for ATP replacements are also proposed for coupons lost in the mail prior to receipt. Additionally, this proposed rulemaking contains new safeguards regarding requests for replacement of coupons reported stolen or destroyed subsequent to receipt.

Replacement issuance procedures are proposed to provide some relief regarding personal disasters, such as a fire loss, which eliminate a household's food supply. Each of these provisions is discussed in detail below.

Coupons Lost in the Mail Prior to Receipt

The proposed rules would establish procedures for coupons lost in the mail prior to receipt that parallel those proposed for ATP's lost or stolen prior to receipt. The State agency would have up to 10 days after the report of nonreceipt to replace the coupons, although the State would be required to replace coupons more promptly if it had determined that sufficient time had elapsed for delivery and it had also completed the other required actions to check, to the extent possible, on the validity of the replacement request. In addition, if a household reported nonreceipt twice in a 6 month period, the State agency would be required to institute an alternate issuance system for that household, such as the use of certified mail. Households would be required to report the nonreceipt in the month in which the coupons were intended to be used.

Coupons Stolen or Destroyed After Receipt

The proposed rules contain additional safeguards to protect against households inaccurately reporting that their coupons have been stolen. These safeguards parallel those proposed when households report the theft of an ATP after receipt.

The Department is proposing that replacements of either coupons or ATP's reported as stolen after receipt be made only once during a 6 month period. The Department believes this limitation strikes an equitable balance between attempting to discourage households from making frequent, unwarranted requests for such replacement and the need to serve households experiencing actual losses. Coupons lost or misplaced after delivery would not be replaced as the Department believes it is the responsibility of each household to avoid misplacing coupons and a matter over which the household has complete control. Moreover, the replacement of coupons based solely on a statement by a household that its original allotment has been lost or misplaced leaves the program particularly vulnerable to abuse because no effective method exists to detect whether the household has used the original allotments.

One exception to this policy has been proposed. To compensate households experiencing an individual household disaster (e.g., fire, not theft) which can be verified, additional replacement allotments could be issued. This approach is adopted because the household disasters are capable of verification. Also, the number of instances in which additional replacements are needed for recurrent disasters affecting the same household are expected to be minimal.

Additionally, the proposed rules require that a household requesting a replacement of coupons or of an ATP due to either theft or destruction after receipt must make the request within 10 days after the loss. A household should know immediately that it has suffered such a coupon or ATP loss. This is different from coupons or ATP's lost in the mail prior to receipt. Mail deliveries can be delayed, and a household may not know for some time that its ATP or coupons have been lost or stolen in the mail. The 10 day limit on requests for coupons and ATP's stolen or destroyed after receipt increases the likelihoood that the replacement requests are legitimate.

A final issue concerns the current requirement for verification, prior to issuing a replacement for coupons stolen after receipt, that a police report has been filed by the victim. The Department has learned of instances where the police have refused to release such reports. While the proposed rules do not alter this requirement, the Department solicits comments and recommendations for possible alternate verification criteria of such reported thefts.

Replacement of Food Losses

As discussed briefly above, Federal guidelines under the 1964 Act provided for the replacement of foods which were bought with coupons where the food was lost, stolen or destroyed. This provision was deleted from regulations implementing the 1977 Act to minimize administrative burdens. Since that decision, the Department has received numerous requests from State agencies and individuals to again provide replacement food stamp allotment for lost food. These proposed regulations provide for a limited reinstitution of such a policy. To reduce the potential for fraud and abuse, the replacement provision is restricted to food losses resulting from a disaster affecting the household.

The Department is proposing that replacement must be requested within 10 days of the disaster, that the State agency have 10 days to make replacement and that the replacement not exceed the household's current monthly allotment. Verification of the disaster must be provided. While no new verification requirements are stated, comments are invited concerning the degree of verification that should be required and specific types of verification which may be of value in such situations.

The Department believes that there is a need for this type of replacement provision to take into consideration individual household disasters as well as natural disasters affecting more than one household. However, in cases where FNS has issued a disaster declaration and the household is otherwise eligible for emergency food stamp benefits under Part 280 of the regulations, this provision for replacement of food losses would not apply.

Implementation

The Department proposes that State agencies implement the procedures relating to replacement of lost or stolen food stamp authorizations and replacement of nondelivered, stolen or destroyed coupons no later than the first of the month 120 days following the date the final regulations are published. States would be permitted, however, to implement these rules earlier.

Therefore, the Department proposes that 7 CFR Parts 272, 273, and 274 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, subparagraph (29) is being added to paragraph (g) in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

* * * * *

(29) Amendment *190*. State agencies shall implement these regulations no later than the first of the month 120 days following publication of final regulations.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.11, paragraph (g)(1) is revised and a new subparagraph (3) is added to (g). The revision and addition read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(g) *Households requesting replacement allotments or ATP's*—(1) *Coupons or ATP's that have been stolen or destroyed after receipt.* A household may request replacement for that portion of its allotment, not to exceed one month's food stamp allotment or for an ATP, which it had received but which was subsequently destroyed in a household disaster such as a fire or flood, or which was subsequently stolen. Replacements of coupons or ATP's lost or stolen in the mail prior to receipt are handled under § 274.2(h) and § 274.3(c).

(i) To qualify for a replacement the household shall report the theft or destruction to the local food stamp office within 10 days of the incident and sign a statement at the food stamp office (a) attesting to the theft or destruction of the household's food stamps or ATP, (B) stating that the original ATP or coupons will be returned to the State agency if recovered by the household, and (C) stating that the household is aware of the penalties for intentional misrepresentation of the facts. The statement shall be retained in the casefile. In the case of theft of coupons, the household shall also report the theft to the local police department and provide to the State agency a copy of the police report or sufficient information to allow the State agency to verify that the theft was reported to the police.

(ii) Upon receiving a request for replacement of coupons or an ATP reported as stolen or destroyed in an individual household disaster, the State agency shall verify the theft or disaster and issue replacement coupons or a replacement ATP, if warranted, within 10 days of receipt of the request. The State agency shall indicate in the casefile that a replacement has been provided. The State agency shall examine the casefile for notation of previous requests by the household for replacement of coupons or an ATP reported stolen subsequent to receipt. Replacement of coupons or an ATP reported as stolen subsequent to receipt shall be made only once in a 6 month period. If, in the previous 5 months, the household has been issued a replacement for either coupons or an ATP reported as stolen subsequent to receipt, than replacement shall be denied. This limit does not apply to replacement issuances of coupons or ATP's when a household has requested replacement of coupons reported as destroyed due to a verified household disaster.

(iii) The State agency shall authorize the issuance of a replacement ATP only if the ATP was valid when issued and if it has been reported lost or stolen in the period of its intended use (for ATP's issued after the 25th of the month, the period intended for their use is 20 days from their issuance). The State agency shall also determine, to the maximum extent practicable, the legitimacy of the request for replacement of the lost or stolen ATP (through such means as determining whether the original ATP has been transacted, and, if so, whether the signature on the original ATP matches that on the request for replacement). The State agency has 10 days to establish these facts, as the replacement, if warranted, must be issued within 10 days.

(iv) In cases in which an ATP replacement is requested, but documentation exists substantiating that the request for replacement is fraudulent, replacement of the ATP shall be denied or delayed. However, in that event the household shall be informed of its right to a fair hearing to contest the denial or delay of the ATP. The denial or delay of the replacement ATP shall remain in effect pending the hearing decision. The State agency may combine the fair hearing with a fraud hearing in accordance with § 273.16(d)(1). To deny or delay a replacement, the State agency must have documentation substantiating fraud, such as a match between the signature on the original ATP that had been transacted and the signature on the replacement request. Fraud could also be indicated where the issuing agent has noted the recipient's correct food stamp identification number (unless the household reports that its ID was stolen) on an original ATP that has been transacted.

(v) Replacement ATP's or replacement coupons which are stolen shall not be replaced.

(vi) The State agency shall not issue a replacement allotment or replacement ATP to a household which reports that its coupons or ATP were lost or misplaced after being received.

(vii) Except as provided for in Part 280, where FNS has issued a disaster declaration and the household is eligible for emergency food stamp benefits, the household shall not receive both the disaster allotment and a replacement allotment under this provision.

* * * * *

(3) *Replacement of food destroyed in a disaster.* In cases in which food purchased with food stamps is destroyed in a disaster affecting a

participating household, that household may be eligible for replacement of the actual value of loss, not to exceed one month's food stamp allotment, if the loss is reported within 10 days and the household can provide verification of the loss. The State agency shall provide an allotment replacement, or an opportunity to obtain an allotment replacement, within 10 days of the reported loss. This provision shall apply in cases of an individual household disaster as well as in natural disasters affecting more than one household. However, in cases where FNS has issued a disaster declaration and the household is otherwise eligible for emergency food stamp benefits under Part 280, the household shall not receive both the disaster allotment and a replacement allotment under this provision.

PART 274—ISSUANCE AND USE OF FOOD COUPONS

3. In § 274.2:

(a) Paragraphs (e)(5) and (g)(1) are revised,

(b) paragraph (g)(3) is removed,

(c) paragraph (g)(4) is redesignated (g)(3), and

(d) paragraph (h) is designated as paragraph (i) and a new paragraph (h) is added. The changes read as follows:

§ 274.2 Issuance systems.

* * * * *

(e) *ATP Issuance* * * *

(5) The State agency shall mail the ATP to the household in a first class nonforwarding envelope, except when the ATP is handled as specified in paragraphs (g) or (h) of this section. The State agency may also use certified mail for ATP delivery, and shall use an alternate method of ATP delivery for households which report two losses of ATP's through the mail within a 6 month period:

* * * * *

(g) *Expedited Service.* (1) The State agency shall manually prepare and issue ATP's at the local level if necessary to provide an opportunity to participate to households certified on an expedited service basis in accordance with § 273.2(i), to comply with the processing standards for initial and recertification and for action on reported changes. To minimize the possibility of misuse of manually prepared ATP's, the State agency shall:

* * * * *

(h) *Replacement of an ATP lost or stolen in the mail prior to receipt.* (1) The State agency shall issue an emergency replacement ATP only if the ATP is reported lost or stolen in the period of its intended use. For ATP's issued after the 25th of the month, the period intended for their use is 20 days from their issuance. Replacements of ATP's stolen or destroyed after receipt are handled under § 273.11(g)(1).

(i) The State agency shall authorize the issuance of a replacement ATP only if the ATP was valid when issued and if it has been reported lost or stolen in the period of its intended use. The State agency shall also determine, to the maximum extent practicable, the legitimacy of the request for replacement of the lost or stolen ATP (through such means as determining whether the original ATP has been transacted, and if so, whether the signature on the original ATP matches that on the replacement). The State agency has 10 days to establish these facts and issue the replacement.

(ii) To obtain a replacement ATP the participant must sign a statement stating that the original ATP will be returned to the State agency if recovered by the household and that the household is aware of the penalties for intentional misrepresentation of the facts. The statement shall be filed in the casefile.

(iii) Replacement ATP's which are stolen shall not be replaced.

(iv) After two requests for replacement of ATP's reported as nondelivered in a 6 month period, the State agency shall issue benefits to that household under an alternate issuance system. The State agency shall keep the household on the alternate issuance system for the length of time the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened.

(v) On at least a monthly basis the State agency shall provide a list of all ATP's reported as lost or stolen from the mail to the appropriate Postal Inspection Service. The State agency should assist the Postal service during the investigation and shall, upon request, supply the Service with a facsimile of the original and replacement ATP's and a copy of the nonreceipt statement. The State agency shall advise the Service if the original ATP is transacted.

(2) In cases in which documentation exists that the request for replacement is fradulent, replacement of the ATP shall be denied or delayed. However, the household shall be informed of its right to a fair hearing to contest the denial or delay of the ATP. The denial or delay of the replacement ATP shall remain in effect pending the hearing decision. The State agency may combine the fair hearing with a fraud hearing, in accordance with § 273.16(d)(1). To deny or delay a replacement, the State agency must have documentation substantiating fraud, such as a match between the signature on the original ATP that has been transacted and the signature on the replacement request, or the notation (by the issuing agent) on an orignial ATP that has been transacted of the recipient's correct food stamp identification number (unless the household reports that its ID was stolen).

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4. In § 274.3 paragraphs (c)(1), (c)(2), and (c)(4) are revised to read as follows:

§ 274.3 Issuance of coupons through the mail.

* * * * *

(c) *Coupons lost in the mail prior to receipt.* (1) Coupons are "in the mail" when deposited with the Postal Service. Replacements for coupons stolen or destroyed after receipt are handled under § 273.11(g)(1). When a household reports the nondelivery of an allotment or partial allotment of coupons issued through the mail the State agency shall:

(i) Determine if the coupons were actually mailed or, if a delivery of a partial allotment is reported, determine the value of the coupons not delivered.

(ii) Review the mail issuance log for the return of undelivered coupons.

(iii) Authorize a replacement issuance only if the coupons were validly issued, if they were reported lost or stolen in the period of their intended use, and if sufficient time has elapsed for delivery.

(iv) Provide the replacement in no more than 10 days after the report of nondelivery has been received. The period of intended use of the coupons is the month for which coupons are issued, except that where coupons are issued after the 25th of the month, the nondelivery must be reported within 20 days of the date of expected receipt.

(v) Prepare and have the participant sign a statement that the coupons will be returned to the State agency if recovered by the household and that the household is aware of the penalties for intentially misrepresenting the facts. The statement shall be retained in the casefile.

(vi) Record the report of nondelivery and the date in the issuance log; and

(vii) Report all losses to the postal authorities. State agencies shall, in cooperation with the Postal Service, attempt to determine the cause of each nondelivery and take appropriate corrective action. States shall also report to the postal authorities all patterns of losses in particular project areas or neighborhoods.

(viii) Take other action warranted by the reported nondelivery.

(2) After two reports by a household of nondelivery in a 6 month period the State agency shall utilize other issuance methods for that household. The State agency shall keep the household on the alternate issuance system for the length of time that the State agency determines to be necessary. The State agency may return the household to the regular issuance system if the State agency finds that the circumstances leading to the loss have changed and the risk of loss has lessened. Alternate issuance methods include:

(i) Using certified mail;

(ii) Arranging for the household to pick up its coupon allotment at a specified location; or

(iii) Moving the household from a mail issuance system to a regular over-the-counter system.

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(4) Replacement coupons which are stolen shall not be replaced.

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Robert Greenstein,

Administrator.

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