b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Central Gulf of Mexico Lease Sale 104 - Final, Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 3301 North Causeway Boulevard, Metairie, Louisiana 70002.

Wm D Bettenberg

Director, Minerals Management Service

(SGD) WM D BETTENBERG

Approved:

Donald Paul Hodel

Secretary of the Interior

Donald Paul Hodel

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Part IV

Federal Emergency Management Agency

44 CFR Parts 59, 60, 61, 65, 70, 73, and 76

National Flood Insurance Program; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 65, 70, 73, and 76

[Docket No. FEMA-FIA]

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National Flood Insurance Program (NFIP) regulations dealing with flood plain management standards, criteria for recognizing levees as providing protection from 100-year floods, procedures for revising or amending maps (including the types of supporting data needed when map changes are requested) and for permitting communities to revise regulatory floodways, flood insurance coverage, the Standard Flood Insurance Policy terms and provisions, denial of the sale of flood insurance, and the State Assistance Program.

DATE: Comments must be received on or before May 27, 1986.

ADDRESS: Send comments to—Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: These proposed amendments are the result of a continuing reappraisal of the National Flood Insurance Program (NFIP) to achieve greater administrative and fiscal effectiveness in the operation of the NFIP and to encourage sound flood plain management so that reductions in loss to life and property and in disaster expenditures can be realized. This reappraisal includes the claims, coverage, rating, and sale of insurance component, the loss reduction (i.e., flood plain management) component and the risk assessment (i.e., mapping of flood hazard areas) component of the NFIP.

Manufactured Homes

The proposed rule revises NFIP criteria to incorporate the term "manufactured home" in lieu of the term "mobile home" which is used in the current regulations. This change in terminology will make the NFIP consistent with terminology used by the U.S. Department of Housing and Urban Development (HUD) in "Manufactured Home Safety and Construction Standards" (24 CFR 3280.2) and by other Federal agencies and the industry. However, the HUD definition includes only "manufactured homes" used as dwelling units that are larger than a specified size. Communities must also regulate "manufactured homes" used for other purposes, "mobile homes" built prior to the June 15, 1976, effective date of the HUD standards which are moved to floodplain locations, and those park trailers, travel trailers, and similar vehicles which are permanently placed on a floodplain site. These other types of structures are often used for the same purposes as conventional structures and are exposed to similar risks and should be subject to NFIP floodplain management criteria. As a result, the proposed rule defines "manufactured home" as a structure transportable in one or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation. This definition is similar to the current NFIP definition of "mobile home" and differs from the HUD definition in that there are no use restrictions and no limitations based on size. Additional clarification is included regarding the status of park trailers, travel trailers, and similar vehicles. For floodplain management purposes, these vehicles are to be regulated as "manufactured homes" if they are placed on a site for greater than 180 days. The intent of this provision is to include these vehicles when they are permanently left on a site and their usage and risk is the same as a "manufactured home", but not include them when they are placed on sites seasonally or used only for camping and other short term occupancies. For insurance purposes, park trailers, travel trailers and similar vehicles are not included as "manufactured homes" and are not insurable. Other types of "manufactured homes" are only insurable if they are adequately anchored to a permanent foundation and meet other requirements in the NFIP flood insurance policy (the Standard Flood Insurance Policy).

The other changes to the current NFIP mobile homes requirements eliminate most of the distinctions that had been drawn between mobile homes and conventional structures. This is also consistent with the actions of other Federal agencies and recognizes improvements in the construction of "manufactured homes" and in installation techniques. FEMA has published a manual entitled "Manufactured Home Installation in Flood Hazard Areas". Based on the research conducted in developing this manual, FEMA has concluded that a "manufactured home" that is elevated to or above the base flood elevation and which is properly anchored to a permanent foundation is no more subject to damages from the base flood than a comparably elevated and anchored conventional structure. However, it should be noted that the "manufactured home" can sustain proportionately higher amounts of damage from floods of a greater magnitude than the base flood if the "manufactured home" floor system is inundated by floodwaters.

The proposed rule would revise NFIP criteria so that virtually the same standards are applied to "manufactured homes" as conventional structures except that separate anchoring and placement provisions would be retained for clarity and to reflect differences in construction. This would result in three major areas of change to current requirements. First, the prohibition on placement of mobile homes in Zones V, VE and V1–30 (coastal high hazard areas) except in existing mobile home parks and subdivisions at § 60.3(e)(7) would be eliminated. "Manufactured homes" placed in V-zones would have to be elevated on piles and columns and meet the same elevation and anchoring requirements in § 60.3(c)(4) as other structures.

Second, the prohibition on placement of "mobile homes" in floodways except in existing mobile home parks and subdivisions at § 60.3(d)(4) would be eliminated. "Manufactured homes" could be placed in floodways, but only if they met the same performance standards required of conventional structures. The "manufactured home" would have to be elevated to or above the base flood elevation and could not increase upstream flood stages during the base flood. Generally, this requires that a registered engineer analyze the proposed development and certify that the development would not increase flood stages. Most development proposed for floodways would cause an increase in flood stages and, therefore, would not meet the "no-rise" criteria. As a result, there should be few "manufactured homes" built in floodways due to this revision.

Finally, the proposed rule will eliminate provisions which allow the replacement, new placement or substantial improvement of mobile homes in existing mobile home parks and subdivisions without elevation. All newly placed or substantially improved

"manufactured homes" will have to be elevated to or above the base flood elevation regardless of whether or not the mobile home park or subdivision was in existence prior to the adoption of the local floodplain management measures. This is the same treatment accorded to conventional housing, which always must be elevated to or above the base flood elevation. This change eliminates four definitions, simplifies several other definitions, and eliminates a number of special provisions that had applied to various categories of mobile home parks and subdivisions. New "manufactured home parks and subdivisions" would be regulated the same as conventional housing subdivisions.

The rationale for including these grandfather provisions for existing mobile home parks and subdivisions in NFIP criteria was that the mobile home park operator's investment was the roads, utilities, accessory structures and mobile home pads and not the mobile homes themselves, which are usually owned by individuals who rent sites. In many older mobile parks the sites were so crowded together that it was feared that the elevation of individual replacement mobile homes would not be feasible and sites would have to be eliminated. However, this need not occur since there are elevation techniques in FEMA's recently published manual "Manufactured Home Installation in Flood Hazard Areas" that require no additional space. In order to allow the mobile home park operator to amortize his investment, the NFIP substantial improvement concept was applied to the park infrastructure and not the individual mobile homes. Only if the park infrastructure is 50% damaged, which seldom happens, must replacement mobile homes be elevated. Since adoption of the current NFIP criteria in 1976, mobile home park operators have had an additional 10 years to amortize this investment in mobile home park infrastructure. In addition most of this infrastructure can continue to be used even if modifications must be made to the mobile home park (now to be "manufactured home park") to permit elevation of individual "manufactured homes."

The elimination of these grandfather provisions will not only make the NFIP treatment of "manufactured homes" consistent with that accorded to conventional structures, but will also result in reduced flood losses to owners of "manufactured homes." In addition, there will be savings to the Federal government through reduced flood insurance claims payments and disaster assistance. Post-disaster Interagency Hazard Mitigation Teams chaired by FEMA have identified a number of instances where large numbers of mobile homes in mobile home parks have been destroyed by floods and then replaced by new non-elevated mobile homes. These new mobile homes in turn were destroyed by floods and again were replaced by new non-elevated mobile homes. Three of the reports of these Hazard Mitigation Teams have recommended that this cycle be broken by eliminating NFIP grandfather provisions for existing mobile parks. This conclusion is supported by NFIP insurance claims information which included numerous examples of multiple claims paid to single policyholders for mobile homes. On a number of occasions the claims payments have been used to purchase a more expensive mobile home, increasing the potential for larger flood losses. These documented examples of repetitive losses due to the grandfather provisions are limited since only eight years of claims can be analyzed. The problem could become more serious due to the large numbers of mobile homes in existing mobile home parks that have not yet been flooded but are likely to be in the future. For example, one Florida County has approximately 7,000 "manufactured homes," most of which are in existing mobile home parks and under the grandfather provision. All of these structures are located in areas that are likely to be flooded by hurricane storm surges. Although some of these structures are now insured by private insurers, they are generally eligible for NFIP flood insurance coverage. These structures and those the NFIP currently insures represent a significant liability to the taxpayer unless the grandfather provisions are eliminated.

Mechanical and Utility Equipment

Section 60.3(a)(3)(ii) of NFIP criteria requires that all new construction and substantial improvements be constructed with materials and utility equipment resistant to flood damages. This provision requires that mechanical and utility equipment such as furnaces, air conditioner units, hot water heaters, washers and dryers, and other similar equipment be elevated to or above the base flood elevation, floodproofed, or made otherwise flood resistant. Because of the general wording of this requirement, there has been confusion regarding its application. The proposed rule clarifies the requirement by adding a new part to be designated as § 60.3(a)(3)(iv) which would require that mechanical and utility equipment be designed and/or elevated to prevent water from entering its components. This would allow placement of flood resistant equipment such as submersible pumps, water supply lines, and sewer lines below the base flood elevation. Mechanical and utility equipment such as furnaces, air conditioner units, hot water heaters, and the like would either have to be elevated to or above the base flood elevation or, under limited circumstances, be flood-proofed (i.e., placed in watertight cases). Much of this mechanical and utility equipment is critical to the continued habitability of the structure after a flood. If this equipment is not properly protected it would be damaged or destroyed in floods more frequent than the base flood. Even though the residence itself would not be damaged, it would not be habitable until this equipment was repaired or replaced.

Start of Construction

The proposed rule also modifies and shortens the definition of "start of construction" in § 59.1. This definition provides the criteria for determining if a structure is "new construction" and thus must meet newly adopted requirements or base flood elevations. Under the current definition, actual start of construction does not occur for a pile or column structure until the first permanent framing takes place. For other structures actual start means the first placement of permanent construction on a site, such as the pouring of slabs or footings. FEMA believes that there are no grounds for distinguishing between the pouring of footings or a slab and the installation of pilings or construction of columns. Each requires a significant investment on the part of the property owners. As a result, the proposed rule revises the definition so that "actual start" occurs when piles are installed or columns are constructed. In addition, the last two sentences which deal with mobile homes have been deleted as part of the "manufactured home" revision. "Actual start" of construction for a "manufactured home" will occur when the "manufactured home" is placed on a site or foundation.

Use of Openings in Enclosures Below a Structure's Lowest Floor

NFIP criteria require that the lowest floor of a residential structure be elevated to or above the base flood elevation and that a nonresidential structure be either elevated or floodproofed to that elevation. For non-floodproofed buildings, the definition of "lowest floor" allows for unfinished

enclosures below the lowest floor provided that they are used solely for parking of vehicles, building access or storage and that the enclosure meets applicable nonelevation design requirements of § 60.3. The design requirements in § 60.3(a)(3)(i) require that structures be designed and anchored to prevent flotation, collapse, and lateral movement. If the walls are watertight and floodwaters are not permitted to enter the enclosure, hydrostatic and hydrodynamic pressures from floodwaters may collapse the walls causing major damage to the rest of the structure. FEMA has provided guidance to communities and individuals that the construction of openings in the walls to permit water to enter and leave the enclosure to equalize floodwater pressure is the proper way to ensure that this does not occur. However, no openings requirement has been specifically included in NFIP criteria and some confusion has resulted. Structures that have such enclosures without openings can be subject to high rates for flood insurance due to the added risk of damage to the structure.

To avoid these problems, the proposed rule makes two changes to NFIP criteria. First, § 60.3(a)(3)(i) would be revised to specifically state that the concern is that flotation, collapse, or lateral movement of the structure would occur due to the effects of hydrostatic and hydrodynamic loads including the effects of buoyancy. Second, a new section would be added at § 60.3(c)(5) providing that where base flood elevations are available, § 60.3(a)(3)(i) be achieved for enclosures through use of openings that would allow for the entry and exist of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. This requirement can be met either through use of a specified type of opening or through use of a design certified by a registered engineer or architect.

Probation and Suspension

The proposed rule includes definitions for "program deficiency," "violation," and "remedy a violation." Defining these terms further refines the revisions to § 59.24 (b) and (c) effective January 1, 1986, which formalize a probationary period for noncompliant communities and describe more fully the standards of compliance to which communities will be held responsible.

Program deficiencies and violations are the two categories of local floodplain management problems that, if left unresolved, result in initiation of an NFIP enforcement action against a community, culminating in possible probation or suspension. Violations are generally the result of program deficiencies. Program deficiencies can always be corrected since a community has considerable control over its own ordinance, administrative procedures, and enforcement tools. Violations often cannot be wholly undone, however, since they involve complicated issues of private property rights, legal constraints, and a property owner's financial investment. Communities are not therefore, required to remove violations completely if such would be infeasible from a practical or legal standpoint, but are required to take whatever actions are necessary to alleviate to the maximum extent possible the effects of the violation. The phrase "remedy a violation" is intended to convey the broad range of actions available to a community when violations must be addressed.

Section 1316 Denial of Flood Insurance

Section 1316 of the National Flood Insurance Act of 1968 provides that no new flood insurance shall be provided for any property found by FEMA to have been declared by a State or local zoning authority to be in violation of State or local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas. This section supports enforcement actions initiated by States and communities by providing them with an additional means, beyond the enforcement provisions of their own ordinances, for obtaining compliance with their floodplain management regulations.

If the State or community declares a property to be in violation and flood insurance is denied to that property, the owner of the property will have an added economic incentive to modify the structure so that it complies and can again become eligible for flood insurance at affordable rates and for Federal financial assistance. Because public liabilities for structures that have been denied insurance are limited, communities and States that do use section 1316 have taken a positive step towards reducing the impacts of violations that cannot be corrected. In addition, using section 1316 to deny insurance will act as a deterrent to future similar violations. Section 1316 is not, however, intended as a substitute for the State's or community's implementation of the enforcement provisions of its regulations or ordinances. Instead it is best used to supplement or reinforce such actions.

The proposed rule provides a new Part 73 that formalizes procedures already in use and contained in the NFIP Community Compliance Program Guidelines for implementing section 1316. In the past FEMA had received section 1316 submissions that were of dubious authority, vague in intent, and without such adequate supporting documentation such as an identifiable property location. This new Part is designed to make clear to communities, States, and FEMA staff precisely what actions need be taken and what documentation needs to be submitted to qualify a property for denial of flood insurance coverage under section 1316 and likewise for restoring the availability of insurance coverage if the property later is deemed compliant. By requiring a clear statement from the community or State that the declaration of violation is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968 along with evidence that the property owner has been so notified, the proposed rule also ensures that States or communities are aware of the implications of their actions before they make a submission. Notifying the property owner will maximize the effectiveness of section 1316 in achieving eventual compliance with the State or local regulation or ordinance.

The proposed rule also states that the State or community shall determine whether or not to declare a structure to be in violation and to submit that declaration to FEMA for denial of insurance under section 1316. The preferred means of dealing with violations of a State or local ordinance is to use the enforcement provisions of that local ordinance to ensure that the violation is corrected and that the structure or other development becomes compliant. FEMA wishes to provide communities with the flexibility to take actions that they feel are most appropriate and most effective in ensuring that violations are remedied and do not reoccur. FEMA would not mandate that section 1316 be applied to each violation. However, the community has the responsibility of ensuring that its floodplain management measures are enforced and that any violations are remedied to the maximum extent possible. In situations where structures cannot be modified so that they become compliant, application of section 1316 may be the most effective remedial measure available. When FEMA evaluates a community's enforcement of its floodplain management measures, a community that chooses not to use section 1316 will have the opportunity to demonstrate that alternative remedial measures have been take to remedy the

violation to the maximum extent possible.

Use of Available Base Flood Data

Current NFIP criteria at § 60.3(b)(4) require that within special flood hazard areas for which FEMA has not established base flood elevations, communities obtain, review, and reasonably use any base flood elevation data that is available from a Federal, State, or other source. These data are to be used by the community to require that new construction and substantial improvements of residential structures have their lowest floor elevated to or above the base flood elevation and that nonresidential structures be elevated or floodproofed to that elevation. This requirement has become increasingly important as a tool for reducing the nation's flood damages as it has become apparent that funds will not be available for FEMA to conduct detailed engineering studies to develop base flood elevations and designate floodways on all streams or in all communities. Detailed engineering studies cannot be economically justified in areas where only low density development will occur even though on a national basis, large numbers of structures will be built in these flood plains. However, base flood elevations have been calculated along many of these streams by other government agencies. Where possible these data are included on FEMA flood maps as existing data studies. There are data from Federal agencies such as the U.S. Geological Survey, U.S. Army Corps of Engineers, Soil Conservation Service, or Tennessee Valley Authority that for one reason or another have not been included on FEMA maps. There will also be data developed by State agencies such as highway departments or natural resource departments and local agencies such as communities, watershed districts or levee districts that will not be included. If an acceptable level of flood loss reduction is to be achieved in areas where FEMA has not developed flood elevations, all these data sources will have to be used to the maximum extent possible to ensure that development will be adequately protected against floods. Structures elevated using available base flood data will also qualify for substantially lower flood insurance rates than structures that are not elevated.

The proposed rule retains the requirement that communities obtain, review, and reasonably utilize base flood elevation data but clarifies and provides additional guidance on how the requirement is to be applied. The proposed rule clearly requires the reasonable use of floodway data in addition to base flood elevation data. The purpose of a floodway is to prevent obstructions of the flood plain which increase flood stages above a specified amount and cause additional damages to upstream property owners. Floodway encroachments can negate the efforts of these upstream property owners to protect themselves from flood losses. It would be contrary to sound flood plain management practices not to use these floodway data when they are available and inconsistent with commitments made by NFIP communities to take into account flood plain management in all their decisions. The proposed rule also clearly includes base flood elevations and floodways developed pursuant to § 60.3(b)(3) as available base flood data. This provision requires that subdivision proposals and other developments greater than 50 lots or 5 acres include this base flood elevation data. This is a clarification of an existing requirement.

Finally, the proposed rule provides that available base flood elevation and floodway data include data from preliminary, draft, and final Flood Insurance Studies developed by FEMA. Those data are to be used under this provision until such time as the community's Flood Insurance Rate Map (FIRM) becomes effective or the community adopts flood plain management measures compliant with § 60.3 (c), (d), or (e), whichever comes first. Structures elevated to or above this base flood elevation can obtain the benefit of lower flood insurance rates whether they are built before or after the effective date of the FIRM.

Functionally Dependent Uses

NFIP flood plain management criteria were primarily intended to regulate residential and conventional commercial and industrial construction. These structures can fully comply with NFIP requirements and still perform their intended function. When applied to some functionally dependent uses such as port facilities, the seafood industry or shipbuilding, NFIP criteria can usually be met, but there may be situations where serious practical difficulties are encountered. Particularly in the case of the port industry, concern has been expressed to FEMA that NFIP criteria make port development impractical or economically infeasible. In response to these concerns, a study was conducted by FEMA which resulted in the publication in 1983 of "Effect of Fllodplain Regulations on Inland Port Facilities." This report confirmed that there was a widespread perception in the port industry that flood plain regulations impeded port development. However, few instances were identified in which ports could not be built in compliance with the regulations while several examples were given of ports that have met all standards.

Of particular concern to the port industry have been the elevation and watertight floodproofing requirements in § 60.3(c)(3), the floodway requirements in § 60.3(d)(3), and various V-zone requirements in § 60.3(e) including those dealing with pile and column construction, use of breakaway walls, prohibition of fill for structural support, and location of structures landward of the reach of mean high tide. Except for the floodway requirements, there are feasible alternative methods for achieving a comparable degree of protection from flood damages for the types of structures that normally accompany functionally dependent uses. One way of addressing the overall issue would be to revise each provision of the regulations that impact on functionally dependent uses to accommodate those needs while still requiring adequate protection. However, this approach is not necessary or appropriate since true functionally dependent uses are not built in large numbers and usually can be built in full compliance with NFIP criteria.

Section 60.6(a) of NFIP regulations establishes general criteria and procedures for the issuance by communities of variances to their local flood plain management ordinances. These procedures and criteria are adopted by the community as guidance for local variance boards and also provide FEMA with criteria for reviewing variances granted by a community to ensure that they are not inconsistent with the objectives of sound flood plain management. A community that grants variances in a manner consistent with NFIP criteria does not jeopardize its NFIP eligibility.

This variance procedure provides a means for addressing many of the unique problems related to functionally dependent uses. Variances that have been issued by communities for residential uses often do not fully meet NFIP variance criteria and should not have been granted. However, this is not always the case for variances granted for functionally dependent uses, which must be located on or adjacent to water to be able to perform a specific function. With a functionally dependent use, there can be exceptional hardships if a variance is not granted and often such structures can be built using methods which minimize flood damage and create no additional threats to public safety. Therefore, the variance

procedure provides the necessary means to address the problems of functionally dependent uses.

The proposed rule defines "functionally dependent use" in § 59.1 as a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The definition further limits the term to docking facilities, port facilities that are necessary for the loading and unloading of cargo and passengers, and shipbuilding and ship repair facilities, but specifically excludes long-term storage or related manufacturing facilities.

The latter can be located outside of the flood plain or fully comply with all NFIP requirements. The intent of the definition is to limit relief so that it is provided only to address the practical problems of building and repairing ships and of loading and unloading cargo and passengers from vessels and moving the cargo onto other forms of transportation or to long term storage facilities that fully comply with NFIP criteria.

The proposed rule adds a provision to NFIP variance criteria af § 60.6(a)(7) that states that communities may grant variances for new construction and substantial improvements and for other development necessary for the conduct of functionally dependent uses. However, all variance criteria must be met and the structures or other development must be protected by methods that minimize flood damages during the base flood. The intent of this provision is to clearly indicate to communities that there are instances in which variances for functionally dependent uses may be appropriate. When FEMA evaluates variances for functionally dependent uses, the primary concerns will be that flood damages will be minimized during the base flood and that no additional threats to public safety will be created. A community that varies individual standards for functionally dependent uses, but still provides for a level of protection equivalent to the base flood will not jeopardize its NFIP eligibility.

As with all variances, the variance is for flood plain management purposes only. Flood insurance rates are required by statute to be based on actuarial risk and cannot be modified. This provision does not prohibit the granting of variances for other uses that do not meet the definition of functionally dependent uses. However, these uses can in nearly all cases fully comply with NFIP criteria and variances will be reviewed more critically than for a functionally dependent use.

As in the existing variance criteria, no variances for functionally dependent uses may be issued within any designated regulatory floodway if any increase in flood levels would result during the base flood. An increase in flood levels would increase potential flood damages to other property owners. In many situations there will be feasible locations outside of the floodway for a functionally dependent use. If a functionally dependent use has no option but to locate in a floodway, the applicant must either demonstrate that no increase in flood stages will result or must provide additional carrying capacity such as through channel improvements to ensure that no increase in flood stages will result. Communities should contact FEMA Regional Offices for technical assistance if they encounter situations where functionally dependent uses must locate in a floodway, but cannot meet the no-increase-in-flood-stage requirement.

As indicated above, FEMA believes that most functionally dependent uses can fully comply with NFIP criteria without resorting to the variance procedure in the proposed rule. To provide additional guidance on construction techniques for industrial and commercial structures such as those that would be required to conduct a functionally dependent use, FEMA will be publishing a manual during the spring of 1986 entitled "Design Manual for Floodproofing NonResidential Construction". This manual will be available upon request to local officials, engineers, architects, contractors and the general public.

Exceptions for Floodproofed Residential Basements

NFIP regulations at § 60.3(c)(2) require that all new construction and substantial improvements of residential structures have their lowest floor including basement elevated to or above the base flood elevation unless the community has been granted an exception to permit construction of floodproofed basements below that elevation. Under § 60.6(b), the Administrator may grant an exception to NFIP criteria where, "because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and gross inequity for a particular community." Prior to granting an exception, the Administrator must examine the impacts of the exception on public safety and the environment and prepare a special environmental clearance (environmental assessment). To date over 40 exceptions have been granted to communities to allow them to permit construction of residences with floodproofed basements.

Although in many parts of the country residential basements are not regared as necessary and are not common, there is a continued demand for basement execeptions from communities in areas which are subject to severe climatic conditions.

FEMA has reviewed the exception procedure in § 60.6(b) and the exception requests for floodproofed basements that have been granted or denied. Based on this review and on a study entitled "Manual for the Construction of Residential Basements in Non-Coastal Flood Environs" published by FIA in 1977, FEMA has determined that the current procedure is overly complicated and an unnecessary administrative burden on FEMA and on communities. Furthermore, FEMA has determined that basements can be adequately and economically floodproofed under certain types of flooding conditions with minimal increases in flood damages and no increases in threats to public safety. However, this is not the case along streams that are subject to deep, high velocity or flash flooding or where there is insufficient warning time to ensure that residents are warned of impending floods. Floodproofed basements in these areas are more likely to fail or to be overtopped by floods larger than the base flood which would result in unacceptable added risk to lives and property. As a result, a process must be retained for distinguishing between those communities and streams where flooding characteristics are such that basements can be adequately floodproofed and those where basements cannot. If flooding characteristics in the community are such that residential basement can be economically floodproofed with minimal increases in potential flood damages and no increases in threats to public safety, communities that wish to permit floodproofed basements should be allowed to do so.

The proposed rule retains the requirement that a community obtain an exception from FEMA prior to permitting the construction of residences with floodproofed basements below the base flood elevation. However, a new category of exception would be created at paragraph (c) of § 60.6. Under this paragraph, the decision to grant or deny the exception would be based solely on a technical review by FEMA of flooding characteristics in the community to determine if the community met criteria in § 60.6(c)(1) of the proposed rule. This review would be based on engineering data submitted by the community and data in the Flood Insurance Study. The numerical criteria in the proposed rule

are based on FEMA's "Manual for Construction of Residential Basements in Non-Coastal Flood Environs," U.S. Army Corps of Engineers "Flood-proofing Regulations" published in June 1972 and on experience gained by FEMA while evaluating previous exception requests.

The criteria are intended to limit the exceptions that are granted under the proposed procedure to those communities whose flooding characteristics pose no special problems to floodproofing basements and where there would be no additional threats to public safety caused by their construction. The letter is important because the consequences of overtopping a floodproofed basement by floods greater that the base flood or of their failure due to improper design or construction are more severe than for other types of residential construction. The basements would immediately fill with floodwaters and, in the case of a failure, major damages could occur to the elevated portion of the structure. In either case, any occupants of the residence could be endangered.

The criteria require that flood velocities in those special flood hazard areas covered by the exception to be no greater than five feet per second. Flood velocities greater than five feet per second can erode fill even when the fill is protected by a vegetative covering. Communities would also be required to demonstrate that depths of flooding are no greater than three feet for lots that would be surrounded by floodwaters and no greater than five feet for lots that are contiguous of land above the base flood elevation. Flood depths of greater than three feet, when combined with the flood velocities that are frequently encountered, create hazardous conditions for any persons attempting to escape from or gain access to isolated lots that are surrounded by floodwaters. For lots contiguous to land above base flood elevation, this access problem is not a concern. However, because of buoyancy loading considerations, the practical design limit for floodproofed basements requires that the basement floor be no lower than five feet below the base flood elevation.

Since the preferred practice is to rest the basement slab on undisturbed soil, basements should not be built where flood depths exceed five feet.

Another critical factor in ensuring that no additional threats to public safety are created by the construction of residential basements is the available flood warning time. Warning time is the elapsed time from when an impending flood can first be detected to when floodwaters begin to cut off access to structures in the community. During this period of time, local officials must notify floodplain occupants of the flood and any evacuations would have to take place. In the absence of a formal flood warning system, the criteria require at least 12 hours of warning time. The 12 hours represents an average period of darkness when rising floodwaters may escape detection. As the available warning time becomes less, increasingly sophisticated warning systems would be required to ensure that occupants of residences with floodproofed basements are notified of an impending flood. Flood warning times of less than two hours would not meet the criteria in the proposed rule since there would be too great a risk that even a minor failure of one or more of the components of the flood warning system would prevent the information from being disseminated. Finally, exceptions would not be granted under the proposed procedure for special flood hazard areas subject to tidal flooding due to the difficulties in accurately evaluating the velocities and wave action which can be encountered in those A1–30 and AE Zones that are adjacent to coastal high hazard areas, and in designing a floodproofed basement which would be adequately protected from these forces.

An exception would be granted contingent on the community amending its flood plain management measures to incorporate the requirements in § 60.6(c)(2). Any basement areas would have to be floodproofed to or above an elevation of at least one foot above the base flood elevation, be surrounded by fill to or above the base flood elevation, and have their design and methods of construction certified by a registered professional engineer or architect. If the difference in elevation between the base flood and the 500-year flood is greater than three feet, then the basement areas would have to be floodproofed to at least two feet above the base flood elevation since there is additional risk that the floodproofing measures will be overtopped by floods greater than the base flood.

Under the proposed rule, no finding would be required that there would be severe hardship or gross inequity if the exception were denied and no special environmental clearance (environmental assessment) would be prepared. The requirement for a special environmental clearance can be eliminated since the decision would be based on a technical review to determine if flooding characteristics met specified criteria. If a community were denied an exception because it did not meet the flooding characteristic criteria in § 60.6(c)(1), that community could still apply for an exception under the general exception provision at § 60.6(b). However, a special environmental clearance would be prepared and a determination required that there would be severe hardship for the community if the exception were denied. This latter requirement would be strictly applied.

This new procedure will substantially reduce the administrative burdens on FEMA and communities created by the current procedures but would result in no increase in potential flood damages or threats to public safety. Nearly all of the basement exceptions that have been granted to date would meet the new criteria on flooding characteristics while those that have been denied would not.

State Assistance Program Termination

The State Assistance Program was designed to promote an intergovernmental partnership with the States to strengthen their role in NFIP flood hazard mitigation activities. It was intended to increase existing State capabilities and to develop new capabilities where none previously existed for the purpose of providing technical assistance to NFIP communities. The Program provided individual States with the opportunity and financial support to develop and implement approaches to accomplish NFIP objectives through State programs.

It has been determined that the intent and objectives of this program have been met, and, therefore, implementing regulations are no longer required. Part 76—State Assistance Program for the NFIP, therefore, has been deleted and reserved for future use. State capabilities that were enhanced or developed under the State Assistance Program will be supported and utilized through other existing or prospective programs designed to provide technical assistance to NFIP communities.

State Coordination

The purpose of § 60.25 of the Program regulations is to provide recommended management considerations for use by States in furthering the Criteria for Land Management and Use as prescribed in Part 60 of the regulations. Section 60.25 is intended to assist the States in the development of appropriate duties and responsibilities for the particular State agency designated by the Governor as being responsible for coordinating the Program.

The management considerations presently provided in § 60.25 are no longer entirely relevant to the State coordination needs of the Program and, therefore, have been revised. Section 60.25, as revised, will enable States to

more effectively respond to the needs of their NFIP communities and will enhance and clarify the role of the coordinating agency for the NFIP within each State.

Standard Flood Insurance Policy

The proposed change in terminology from "mobile home" to "manufactured home" already discussed for the NFIP flood plain management provisions would also be made in the Standard Flood Insurance Policy (SFIP). The term "manufactured home" would be defined differently in the SFIP from the way it is defined for flood plain management purposes. In the proposed SFIP definition, "manufactured home" would not include park trailers, travel trailers and other similar type vehicles, which would be ineligible for coverage, as they are currently. The current tie down requirement in the SFIP for "mobile homes" would now apply to "manufactured homes." Replacement cost coverage is not available under the current SFIP for mobile homes, but is available for doublewide mobile homes, which are currently defined using dimension criteria. Those same dimension criteria would now determine which manufactured homes would be eligible for replacement cost coverage. Consistent with the proposed removal of the flood plain management provision prohibiting mobile homes in V-zones, the provision in the SFIP making mobile homes in V-zones ineligible for coverage would be removed. The proposed rule would also change the coverage in the SFIP for expenses incurred in the temporary removal of an insured mobile home or insured contents (personal property) away from the peril of flood to provide coverage for temporary removal expenses for insured contents (personal property) only.

Currently, the NFIP does not insure a building until it has in place two or more exterior, rigid walls and a fully secured roof. Some insurance agents have recommended providing coverage for buildings before they are walled and roofed. The proposed rule would provide such coverage in the SFIP subject to an increased deductible. There would be no coverage before the building was walled and roofed if construction stopped for over 90 days or if the lowest floor is below the base flood elevation.

The NFIP continues to encounter situations where lake waters slowly rise over a long period of time, gradually causing more flood damage to insured buildings. Currently, the NFIP treats this as one loss and makes several claims payments as new damage occurs until the policy limits are reached.

The proposed rule would amend the SFIP to provide that where an insured building has been flooded continuously for 90 days, and it appears that flood damage will eventually reach the policy limits, the policy limits would be paid without waiting for further damage to occur. The policyholder would be required to sign a release agreeing to three conditions: (1) To make no further claim under the policy, (2) not to seek renewal of the policy, and (3) not to apply for any flood insurance under the National Flood Insurance Act of 1968, as amended, for property at the property address of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, this procedure would still apply so long as the first covered damage from the continuous flooding occurred before the end of the policy term.

The proposed rule would clarify that there is coverage for unfinished drywalls and sheetrock walls and ceilings in basements and for elevators and relevant equipment in basements and in the enclosed areas below elevated buildings. The proposed rule would also exclude coverage for elevator relevant equipment installed on or after October 1, 1987, that is located below the base flood level, and in this connection, a definition of base flood has been added to the SFIP.

To clarify the intent of the SFIP not to cover any damage mitigation expenses, except those for which reimbursement is expressly provided, the general mitigation provisions in the SFIP, along with an interpretative ruling on them, would be removed by the proposed rule, and the Alterations and Repairs provision would specify that alterations, additions, and repairs are at the insured's own expense.

The proposed rule would also clarify that the SFIP exclusion for buildings located seaward of mean high tide, where the building was newly constructed or substantially improved on or after October 1, 1982, applies only if the building is located entirely seaward of mean high tide.

A number of other changes would be made in the SFIP for clarity, and in some cases, for consistency between the two SFIP forms, the Dwelling Form and the General Property Form.

Mapping Changes

Section 61.12 contains procedures for applying section 1307(e) of the National Flood Insurance Act of 1968, as amended, which grants communities relief from insurance premiums based on adequate progress towards completion of federally funded flood protection systems. Adequate progress is defined in terms of project cost as 100 percent authorized, 60 percent appropriated, 50 percent expended, and 50 percent of physical feature construction completed. A complicating factor of § 61.12 is that it does not address the applicability of the flood plain management provisions of § 60.3. FIA has established the procedure of designating areas affected by § 61.12 determinations as Zone A99, which in effect reduces insurance premiums and relaxes flood plain management criteria in recognition of the protection to be provided by the flood protection system under construction.

To support both the provisions of section 1307(e) of the Act and the provisions of the Act relating to actuarial soundness and effective flood loss reduction, determinations under § 61.12 should include a review of the construction status of all critical physical features within the flood protection system under consideration. Consideration of each critical physical feature will assure that unreasonable § 61.12 applications are not made for structures that will not provide flood protection for extended periods of time. To promote a reasonable and nonarbitrary means of making decisions relating to § 61.12, FIA must further qualify the original requirement that a flood protection system's physical features be under construction and be 50 percent completed to mean that *all* of the critical features (i.e., physical features) comprising a flood protection system must be under construction and 50 percent completed. A critical feature is defined as an integral and readily identifiable part of the flood protection system without which the flood protection provided by the entire system would be compromised.

For example, a large project such as a hurricane flood protection project often consists of many different features such as levee sections, flood walls, and flood gates. For such a system to be considered under the proposed revisions to § 61.12, each of these critical features must be under construction and 50 percent complete. The approach of reviewing the completion status of each critical feature, instead of only assessing the entire flood protection system's construction completion level as a unit, will allow more structured decision making in § 61.12 applications; will assure that adequate progress is being made toward an effective flood protection system and will assure that the design level of protection will be achieved within a reasonable period of time after insurance rates are reduced

and nonstructural flood plain management requirements are eliminated.

The flood risk data published in NFIP maps and Flood Insurance Study (FIS) reports form the technical basis for the administration of the NFIP in each flood-prone community in the nation. These data provide the basis for flood plain management measures required of each community participating in the NFIP, as well as the basis for actuarial flood insurance premiums. Although the preparation of NFIP maps and FIS reports is subject to rigorous technical standards, it is recognized that improvements in techniques used to estimate flood risks, changes in physical conditions in flood plains or watersheds, and availability of new technical data may necessitate revisions of the maps and studies.

In making such revisions, there must be adherence to the same engineering standards applied in the preparation of the original map and FIS report. When requesting changes to NFIP maps and FIS reports, adequate supporting data must be submitted. These data allow FEMA to review and evaluate the requests and to carry out its responsibility to ensure that the information to be presented is scientifically and technically correct.

A great deal of time and effort is expended by individuals, communities, and FEMA in obtaining the technical information needed to evaluate requests for changes to the NFIP maps. The proposed rule provides more detailed information on the types of supporting data that FEMA needs to review and evaluate requested map changes.

The granting of revisions to NFIP maps without specifications for the placement of fill has been a concern in the past. The basis of this concern is threefold. First, improperly protected fill can be subject to scour and erosion which can result in the exposure of the structure to damages due to undermining. Second, improperly compacted fill can settle. In extreme cases this could result in the fill surface subsiding below the base flood elevation (BFE) or in major structural damage to the building if differential settling occurs. Third, the removal of property from the flood plain permits the construction of homes with non-floodproofed basements. These basements can suffer significant damages due to hydrostatic pressure if the fill that is used is highly permeable or improperly compacted.

By establishing criteria requiring that fill be engineered to ensure its permanency, adverse impacts such as those mentioned will be minimized as a condition of granting a map revision. The proposed rule establishes requirements for compaction and density of fill layers, elevation of fill, and adequate protection of fill slopes. A certification from a community's NFIP permit official, a registered professional engineer, or an accredited soils scientist that these requirements have been met is required.

The degree of protection afforded by a levee system is never known precisely because of the uncertainties involved in establishing the base flood elevations and the structural stability of the levee itself. Therefore, levee systems must meet certain requirements to be recognized by the NFIP as providing protection from the base floods. In this regard, the proposed rule provides requirements for the treatment of earthen riverine and coastal levees involving (1) design, including freeboard requirements, closures, embankment protection, stability, settlement, and interior drainage; (2) operation, including closures and interior drainage; and (3) maintenance.

Freeboard is required to offset the hazards that might arise from underestimation of the base flood elevations as a result of uncertainties in the hydraulic and hydrologic analyses. The freeboard must be sufficient to protect against overtopping and to ensure the structure stability of the levee system under the loading conditions expected to occur during the base flood.

Under the proposed rule, a levee system that involves closure devices would only be recognized if these devices are appropriately designed and are structually a part of the levee system. Sandbags would not be recognized for this purpose. The design and operation of these devices must ensure the structural stability of the levee system.

The proposed rule also prescribes requirements for analyses which demonstrate that appreciable erosion of the levee embankment will not occur during the base flood; that seepage during loading conditions associated with the base flood will not jeopardize embankment or foundation stability; that the potential and magnitude of freeboard loss resulting from levee settlement is not critical; that facilities to eliminate flooding due to interior drainage are adequate; and that operation and maintenance requirements are sufficient to ensure continuation of the protection afforded by the levee as designed and constructed. FEMA may require that other factors, in addition to those listed in the proposed rule, be considered in certain situations.

The accuracy of the flood plain boundaries shown on NFIP maps is limited by the scales at which maps are prepared and by the topographic data available to prepare them. These limitations may result in structures or parcels of land being incorrectly included in a special flood hazard area (SFHA). When alteration of topography (i.e., earth fill) has not occurred since the effective date of the first NFIP map and it is demonstrated that the property has been inadvertently included in a SFHA, a Letter of Map Amendment may be granted removing the property from the SFHA.

The proposed rule clarifies Part 70 by eliminating its application in situations where there has been alteration of topography since the effective date of the first NFIP map showing the property within the SFHA. Also, a statement is inserted referencing Part 65 if alteration of topography has occurred.

To further clarify the regulations, the definitions of "critical feature", "levee", and "levee system" are added. The definitions of "mean sea level" and "water surface elevation" are revised to include reference to the NGVD of 1929.

FEMA has determined, based upon an Environmental Assessment, that the proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environment Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that the proposed rule does not contain a collection of information requirement as described in Section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59, 60, 61, 65, 70, 73 and 76

Flood insurance, Flood plains, Grant programs/National Resources, Intergovernmental relations.

Accordingly, it is proposed to amend 44 CFR Chapter I, Subchapter B as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows and all authority citations to individual sections are removed.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By adding, alphabetically, a definition of "Critical feature" to read as follows:

* * * * *

"Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

* * * * *

b. By removing the definition of "Existing mobile home park or mobile home subdivision."

c. By removing the definition of "Expansion to an existing mobile home park or mobile home subdivision."

d. By adding, alphabetically, a definition of "Functionally dependent use" to read as follows:

* * * * *

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

* * * * *

e. By adding, alphabetically, a definition of "Levee" to read as follows:

* * * * *

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with accepted engineering standards to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

* * * * *

f. By adding, alphabetically, definition of "Levee system" to read as follows:

* * * * *

"Levee System" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with accepted engineering standards.

* * * * *

g. By adding, alphabetically, a definition of "Manufactured home" to read as follows:

* * * * *

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

* * * * *

h. By adding, alphabetically, a definition of "Manufactured home park or subdivision" to read as follows:

* * * * *

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

* * * * *

i. By revising the definition of "Mean sea level" to read as follows:

* * * * *

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

* * * * *

j. By removing the definition of "Mobile home".

k. By removing the definition of "Mobile home park or mobile home subdivision."

l. By removing the definition of "New mobile home park or mobile home subdivision."

m. By adding, alphabetically, a definition of "Program deficiency" to read as follows:

* * * * *

"Program deficiency" means a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the standards in §§ 60.3, 60.4, 60.5, or 60.6.

* * * * *

n. By adding, alphabetically, a definition of "Remedy a violation" to read as follows:

* * * * *

"Remedy a violation" means to bring the structure or other development into compliance with State or local flood plain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

* * * * *

o. By revising the definition of "Start of construction" to read as follows:

* * * * *

"Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97–348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

* * * * *

p. By moving in the definition of "Structure" the phrase "mobile home" both times it appears and adding in its place both times the phrase "manufactured home" and by adding before the word "foundation" the words "a permanent."

q. By adding, alphabetically, a definition of "Violation" to read as follows:

* * * * *

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations A

structure or other development without the elevation certificate, or other certifications, required in § 60.3 (b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

* * * * *

r. By adding, alphabetically, a cross reference from "V zone" to "Coastal high hazard area" to read as follows:

* * * * *

"V Zone"—see "coastal high hazard area."

* * * * *

s. By revising the definition of "Water surface elevation" to read as follows:

* * * * *

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

3. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.3 [Amended]

4. Section 60.3 is amended as follows:

a. By removing in paragraph (a)(1) the phrase "mobile homes" and adding in its place the phrase "manufactured homes".

b. By revising paragraph (a)(3) to read as follows:

* * * * *

(a) * * *

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

* * * * *

c. By adding in the first sentence of paragraph (a)(4) between the words "development" and "to" the phrase ", including manufactured home parks or subdivision,".

d. By removing in paragraphs (b)(1) and (b)(8) (twice) the phrase "mobile homes" and adding in its place the phrase "manufactured homes".

e. By revising paragraphs (b)(3) through (b)(5) to read as follows:

* * * * *

(b) * * *

(3) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph (b)(3) of this section and data from a Flood Insurance Study prior to the effective date of the community's FIRM, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community's FHBM or FIRM meet the standards in paragraphs (c)(2), (c)(3), (c)(5), (c)(6), (d)(2) and (d)(3) of this section;

(5) Where base flood elevation data are available, within Zone A on the community's FHBM or FIRM, (i) obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and (ii) obtain, if the structure has been floodproofed in accordance with paragraph (c)(3)(ii), the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

* * * * *

f. By removing paragraph (b)(9).

g. In paragraph (c)(2), by removing the phrase "and/or storm cellars" and also by removing the phrase "§ 60.6 (b)(3) and (b)(4)" and adding in its place the phrase "§ 60.6 (b) or (c)".

h. By revising paragraphs (c)(5) and (c)(6) to read as follows:

* * * * *

(c) * * *

(5) Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces one exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(6) Require that all manufactured homes to be placed within Zones A1–30, AH, and AE on the community's FIRM be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of paragraph (b)(8) of this section.

* * * * *

i. By removing paragraph (d)(4).

j. By removing paragraph (e)(7) and redesignating paragraph (e)(8) as (e)(7).

§ 60.6 [Amended]

5. Section 60.6 is amended as follows:

a. By adding paragraph (a)(7) to read as follows:

(a) * * *

(7) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of (a)(1) through (a)(4) of this section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

b. By removing paragraphs (b)(3) and (b)(4).

c. By adding paragraph (c) to read as follows:

* * * * *

(c) A community may propose flood plain management measures which adopt standards for floodproofed residential basements below the base flood level in zones A1–30, AH, AO, and AE which are not subject to tidal flooding. Notwithstanding the requirements of paragraph (b) of this section the Administrator may approve the proposal provided that:

(1) The community has demonstrated that areas of special flood hazard in which basements will be permitted are subject to shallow and low velocity flooding and that there is adequate flood

warning time to ensure that all residents are notified of impending floods. For the purposes of this paragraph flood characteristics must include:

(i) Flood depths that are five feet or less for developable lots that are contiguous to land above the base flood level and three feet or less for other lots;

(ii) Flood velocities that are five feet per second or less; and

(iii) Flood warning times that are 12 hours or greater. Flood warning times of two hours or greater may be approved if the community demonstrates that it has a flood warning system and emergency plan in operation that is adequate to ensure safe evacuation of flood plain residents.

(2) The community has adopted flood plain management measures that require that new construction and substantial improvements of residential structures with basements in zones A1–30, AH, AO, and AE shall:

(i) Be designed and built so that any basement area, together with attendant utilities and sanitary facilities below the floodproofed design level, is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capacity to resist hydrostatic and hydrodynamic loads and the effects of bouyancy resulting from flooding to the floodproofed design level, and shall be designed so that minimal damage will occur from floods that exceed that level. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the 500-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet.

(ii) Have the top of the floor of any basement area no lower than five feet below the elevation of the base flood;

(iii) Have the area surrounding the structure on all sides filled to or above the elevation of the base flood. Fill must be compacted with slopes protected by vegetative cover;

(iv) Have a registered professional engineer or architect develop or review the building's structural design, specifications, and plans, including consideration of the depth, velocity, and duration of flooding and type and premeability of soils at the building site, and certify that the basement design and methods of construction proposed are in accordance with accepted standards of practice for meeting the provisions of this paragraph;

(v) Be inspected by the building inspector or other authorized representative of the community to verify that the structure is built according to its design and those provisions of this section which are verifiable.

6. Section 60.25 is revised to read as follows:

§ 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.

(a) States are encouraged to demonstrate a commitment to the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the designation of an agency of State government to be responsible for coordinating the Program aspects of flood plain management in the State.

(b) State participation in furthering the objectives of this part shall include maintaining capability to perform the appropriate duties and responsibilities as follows:

(1) Enact, whenever necessary, legislation enabling counties and municipalities to regulate development within flood-prone areas;

(2) Encourage and assist communities in qualifying for participation in the Program;

(3) Guide and assist county and municipal public bodies and agencies in developing, implementing, and maintaining local flood plain management regulations;

(4) Provide local governments and the general public with Program information on the coordination of local activities with Federal and State requirements for managing flood-prone areas;

(5) Assist communities in disseminating information on minimum elevation requirements for development within flood-prone areas;

(6) Assist in the delineation of riverine and coastal flood-prone areas, whenever possible, and provide all relevant technical information to the Administrator;

(7) Recommend priorities for Federal flood plain management activities in relation to the needs of county and municipal localities within the State;

(8) Provide notification to the Administrator in the event of apparent irreconcilable differences between a community's local flood plain management program and the minimum requirements of the Program;

(9) Establish minimum State flood plain management regulatory standards consistent with those established in this part and in conformance with other Federal and State environmental and water pollution standards for the prevention of pollution during periods of flooding;

(10) Assure coordination and consistency of flood plain management activities with other State, areawide, and local planning and enforcement agencies;

(11) Assist in the identification and implementation of flood hazard mitigation recommendations which are consistent with the minimum flood plain management criteria for the Program;

(12) Participate in flood plain management training opportunities and other flood hazard preparedness programs whenever practicable.

(c) Other duties and responsibilities which may be deemed appropriate by the State and which are to be officially conducted in the capacity of the State Coordinating Agency for the Program shall be carried out only upon prior approval by the Administrator.

(d) For States which have demonstrated a commitment to and experience in application of the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the establishment and implementation of programs which substantially encompass the activities described in paragraphs (a), (b), and (c) of this section, the Administrator shall take the foregoing into account when:

(1) Considering State recommendations prior to implementing Program activities affecting State communities;

(2) Considering State approval on certifications of local flood plain management regulations as meeting the requirements of this part.

PART 61—INSURANCE COVERAGE AND RATES

7. The authority citation for Part 61 continues to read as follows and all authority citations to individual sections are removed:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 61.3 [Amended]

8. Section 61.3 is amended by removing the last sentence.

§ 61.5 [Amended]

9. Section 61.5 is amended as follows:

a. By removing the words "an insured mobile home or" in paragraph (d).

b. By revising paragraph (f)(2) to read as follows:

* * * * *

(f) * * *

(2) A building, and its contents, located entirely in, on, or over water or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

* * * * *

c. By removing in paragraph (f)(4) the words "paved or poured".

d. In paragraph (f)(8), by removing the word "mobile" both times it appears and adding in its place both times the phrase "manufactured (i.e., mobile)" and by removing the words "and affixed to a permanent site" and adding in their place the words "to a permanent foundation" and by adding before the words "foundation continuously" the word "permanent".

e. By removing paragraph (f)(9) and redesignating paragraphs (f)(10) and (f)(11) as (f)(9) and (f)(10) respectively.

f. In newly designated paragraph (f)(9), by removing the word "mobile" and adding in its place the word "manufactured"; by adding after the words "on all sides" the phrase "(except for drywalls and sheetrock walls and ceilings, whether finished or unfinished, all only to the extent of replacing them with unfinished (i.e., nailed to framing but not taped or otherwise finished with paint or other covering) drywall or sheetrock ceilings or walls, and except for fiberglass insulation)"; by adding after the words "gas tanks" the words "and the gas in them"; by adding after the word "freezers" the words "and the food in them"; and by adding to the end of the paragraph, before the period, the words "and for elevators and relevant equipment, except for such relevant equipment located below the base flood level if such relevant equipment was installed on or after October 1, 1987".

§61.11 [Amended]

10. Section 61.11 is amended by removing in both the third and fourth sentence of paragraph (e) the words "at the NFIP" and adding in their place in both sentences the words "at the office of the NFIP".

§61.12 [Amended]

11. Section 61.12 is amended by revising paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) All critical features of the flood protection system, as identified by the Administrator, are under construction, and each critical feature is 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

* * * * *

Appendix A(1) of Part 61—[Amended]

12. Appendix A(1) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. Article II—Definitions is amended by adding, alphabetically, a definition of "Base flood" to read as follows:

* * * * *

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

* * * * *

b. In Article II—Definitions, the definition of "Building" is amended by adding a comma after the word "tank" and by removing the words "mobile home on" and adding in their place the words "manufactured home on a permanent".

c. In Article II—Definitions, the definition of "Direct Physical Loss by or From Flood" is amended by removing the phrase "(building or personal property contents)" and adding in its place the phrase "(building or contents (personal property))"; by removing the phrase "the property shall necessarily be removed by you in order to protect and preserve it" and adding in its place the phrase "the insured contents (personal property) shall necessarily be removed by you in order to protect and preserve them"; and by removing the phrase "your insured property away from the peril of flood and storing your property" and adding in its place the phrase "your insured contents (personal property) away from the peril of flood and storing them".

d. Article II—Definitions is amended by removing the definition of "Doublewide Mobile Home".

e. Article II—Definitions is amended by adding, alphabetically, a definition of "Manufactured home" to read as follows:

* * * * *

"Manufactured home" means a building transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. To be eligible for coverage under this policy, a manufactured home must be on a permanent foundation and if located in a FEMA designated Special Flood Hazard Area, must meet the requirements of paragraph H of Article V.

* * * * *

f. Article II—Definitions is amended by adding, alphabetically, a definition of "Mobile home" to read as follows:

* * * * *

"Mobile home" means a manufactured home.

* * * * *

g. In Article III—Losses Not Covered, paragraph B is amended by removing paragraph 1 and designating paragraphs 2 through 7 as 1 through 6 respectively and by removing the word "internationally" and adding in its place the word "intentionally" in newly designated paragraph B.4.

h. In Article IV—Property Covered, paragraph A is amended by removing in paragraph 1 the words "or, as described in the Application as a residence designed for principal use as a dwelling place for no more than one family, we cover your dwelling unit in a condominium building, along with your insurable tenant in common interest in the building's common elements" and adding in its place the words "or we cover your dwelling unit in a condominium building, along with your insurable tenant in common interest in that building's common elements, if your dwelling unit is a residence designed for principal use as a dwelling place for no more than one family and if it is so described in the Application" and by adding paragraphs 6 and 7 to read as follows:

* * * * *

6. A building in the course of construction before it is walled and roofed subject to the following conditions: (i) the amount of the deductible for each loss occurrence before the building is walled and roofed is two times the deductible which is selected to apply after the building is walled and roofed; (ii) there is no coverage before the building is walled and roofed during any period beyond 90 days after construction has stopped until construction is resumed; and (iii) there is no coverage before the building is walled and roofed where the lowest floor, including basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is below the base flood elevation in Zones AH, AE or A1–30 or is below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

7. When the insurance under this policy covers a building, the reasonable expenses incurred by you for the purchase of (i) sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of saving the building due to the imminent danger of a flood loss, including the value of your own labor at prevailing Federal minimum wage rates, are a covered loss in an aggregate amount up to the amount of the minimum building deductible. The policy's building deductible amount, as provided for at Article VI, shall not be applied to this reimbursement, but shall be applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph 7 to apply, the following conditions must be met:

(i) The insured property must be in imminent danger of sustaining flood damage; and

(ii) The threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood.

* * * * *

i. In Article IV—Property Covered, paragraph C is amended by removing the heading "Limitation" and adding in its place the heading "Limitations".

j. In Article V—Property Not Covered, paragraph B is revised to read as follows:

* * * * *

B. A building, and its contents, located entirely in, on, or over water or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

* * * * *

k. In Article V—Property Not Covered, paragraph C is amended by removing the word "outdoor".

l. In Article V—Property Not Covered, paragraph D is amended by removing the words "paved or poured".

m. In Article V—Property Not Covered, paragraph F is amended by removing the word "mobile" and adding in its place the word "manufactured"; by adding after the words "on all sides" the phrase "(except for drywalls and sheetrock walls and ceilings, whether finished or unfinished, all only to the extent of replacing them with unfinished (i.e., nailed to framing but not taped or otherwise finished with paint or other covering) drywall or sheetrock ceilings or walls, and except for fiberglass insulation)"; by adding after the words "gas tanks" the words "and the gas in them"; and by adding after the word "freezers" the words "and the food in them"; and by adding to the end of the paragraph, before the period the words "and for elevators and relevant equipment, except for such relevant equipment located below the base flood level if such relevant equipment was installed on or after October 1, 1987".

n. In Article V—Property Not Covered, paragraph H is amended by removing the word "mobile" both times it appears and adding in its place both times the words "manufactured (i.e., mobile)" and by removing the words "and affixed to a permanent site" and adding in their place the words "to a permanent foundation" and by adding before the words "foundation continuously" the word "permanent".

o. Article V—Property Not Covered is amended by removing paragraph J and redesignating paragraph K as J.

p. In Article VI—Deductibles, paragraph B is revised to read as follows:

* * * * *

B. The loss deductible shall apply separately to each building loss and contents (personal property) loss including, as to each, any appurtenant structure loss and debris removal expense.

* * * * *

q. In Article VI—Deductibles, paragraph D is amended by removing the words "an insured mobile home or".

r. In Article VII—Replacement Cost Provisions, paragraph G is amended by removing the words "mobile home" and adding in their place the words "manufactured home which when assembled is not at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

s. In Article VIII—General Conditions and Provisions, paragraph D is amended by removing in the last sentence the words "without the consent of the Administrator".

t. In Article VIII—General Conditions and Provisions, paragraph F is amended in the last sentence of paragraph 1.d thereof by removing the comma after the word "year and adding in its place a closing parenthesis and by removing the closing parenthesis before the semicolon.

u. In Article VIII—General Conditions and Provisions, paragraph G is amended by removing in the sixth sentence the words "received by the NFIP prior" and adding in their place the words "received at the office of the NFIP prior" and by removing in the seventh sentence both times they appear the words "by the NFIP" and adding in their place both times the words "at the office of the NFIP".

v. In Article VIII—General Conditions and Provisions, paragraph H is amended by adding in the first sentence after the word "time" and before the following comma the words "and at your own expense" and by removing the remainder of paragraph H after the first sentence.

w. In Article VIII—General Conditions and Provisions, paragraph I is amended by removing paragraph 2 and redesignating paragraphs 3 through 7 as 2 through 6 respectively.

x. In Article VIII—General Conditions and Provisions, paragraph O is amended by removing the word "items" in the first paragraph and adding in its place the word "coverage".

y. Article VIII—General Conditions and Provisions is amended by adding paragraph S to read as follows:

* * * * *

S. Continuous Lake Flooding: Where the insured building has been flooded continuously for 90 days or more by rising lake waters and it appears reasonably certain that a continuation of this flooding will result in damage reimbursable under this policy to the insured building of the building policy limits plus the deductible, we will pay you the building policy limits without waiting for the further damage to occur if you sign a release agreeing (i) to make no further claim under this policy, (ii) not to seek renewal of this policy, and (iii) not to apply for any flood insurance under the National Flood Insurance Act of 1968, as amended, for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph S still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

Appendix A(2) of Part 61—[Amended]

13. Appendix A(2) of Part 61, Standard Flood Insurance Policy, is amended in the following particulars:

a. The first paragraph following the heading "GENERAL PROPERTY FORM" in Appendix A(2) is amended by removing the misspelled word "resonable" and adding in its place the word "reasonable"; by removing the phrase "loss. Without" and adding in its place the phrase "loss, without"; by removing the word "only" and adding in its place the word "any"; and by removing the phrase "*direct loss by or from 'flood'*" and by adding in its place the phrase "*'direct loss by or from flood'*".

b. The first sentence of the second paragraph following the heading "GENERAL PROPERTY FORM" in Appendix A(2) is amended by adding after the word "policy" the phrase ", in writing," and by adding after the word "allowed" the phrase "upon transfer of title except for (i) a contents only policy and (ii) a policy issued to cover a building in the course of construction."

c. The DEFINITIONS section is amended by adding, alphabetically, a definition of "Base flood" to read as follows:

* * * * *

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

* * * * *

d. In the DEFINITIONS section, the definition of "Building" is amended by adding a comma after the word "tank" and by removing the words "mobile home on" and adding in their place the

words "manufactured home on a permanent".

e. In the DEFINITIONS section, the definition of "Direct physical loss by or from flood" is amended by removing the phrase "(building or personal property contents)" and adding in its place the phrase "(building or contents (personal property))"; by removing the phrase "the property shall necessarily be removed in order to protect and preserve it" and adding in its place the phrase "the insured contents (personal property) shall necessarily be removed in order to protect and preserve them"; and by removing after the word "ordinance" and before the word "regulating" the words "or repair".

f. The DEFINITIONS section is amended by removing the definition of "Double-wide mobile home".

g. The DEFINITIONS section is amended by adding, alphabetically, a definition of "Manufactured home" to read as follows:

* * * * *

"Manufactured home" means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. To be eligible for coverage under this policy, a manufactured home must be on a permanent foundation and if located in a FEMA designated Special Flood Hazard Area, must meet the requirements of paragraph H of PROPERTY NOT COVERED.

* * * * *

h. The DEFINITIONS section is amended by adding, alphabetically, a definition of "Mobile home" to read as follows:

* * * * *

"Mobile home" means a manufactured home.

* * * * *

i. The PERILS EXCLUDED section is amended by removing paragraph F and redesignating paragraphs G through K as F through J respectively.

j. In the PROPERTY COVERED section, paragraph A is amended by adding after the phase "A. Building." the number "1." and by adding paragraphs 2 and 3 to read as follows:

* * * * *

2. When the insurance under this policy covers a building in the course of construction, such insurance shall apply before the building is walled and roofed subject to the following conditions: (i) the amount of the deductible for each loss occurrence before the building is walled and roofed is two times the deductible which is selected to apply after the building is walled and roofed; (ii) there is no coverage before the building is walled and roofed during any period beyond 90 days after construction has stopped until construction is resumed; and (iii) there is no coverage before the building is walled and roofed where the lowest floor, including basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is below the base flood elevation in Zones AH, AE or A1–30 or is below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

3. When the insurance under this policy covers a building, the reasonable expenses incurred by the Insured for the purchase of (i) sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of saving the building due to the imminent danger of a flood loss, are a covered loss in an aggregate amount up to the amount of the minimum building deductible. The policy's building deductible amount, as provided for herein under "DEDUCTIBLES," shall not be applied to this reimbursement, but shall be applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph 3 to apply, the following conditions must be met:

(i) The insured property must be imminent danger of sustaining flood damage; and

(ii) The threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood.

* * * * *

k. In the PROPERTY COVERED section, paragraph B is amended by adding paragraph 5 to read as follows:

* * * * *

5. For contents covered herein and subject to the terms of the policy, including the limits of liability, the Insurer will reimburse the Insured for reasonable expenses necessarily incurred by him for removal or temporary storage (not exceeding 45 days), or both, of insured contents, from the described premises because of the imminent danger of flood if the contents so removed are placed in a fully enclosed building or otherwise reasonably protected from the elements.

* * * * *

l. In the PROPERTY NOT COVERED section, paragraph B is revised to read as follows:

* * * * *

B. A building, and its contents, located entirely in, on, or over water or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

* * * * *

m. In the PROPERTY NOT COVERED section, paragraph D is amended by removing the words "paved or poured".

n. In the PROPERTY NOT COVERED section, paragraph F is amended by removing the word "mobile" and adding in its place the word "manufactured"; by adding after the words "on all sides" the phrase "(except for drywalls and sheetrock walls and ceilings, whether finished or unfinished, all only to the extent of replacing them with unfinished (i.e., nailed to framing but not taped or otherwise finished with paint or other covering) drywall or sheetrock ceilings or walls, and except for fiberglass insulation)"; by adding after the words "gas tanks" the words "and the gas in them", by adding after the word "freezers" the words "and the food in them"; and by adding to the end of the paragraph, before the period, the words "and for elevators and relevant equipment, except for such relevant equipment located below the base flood level if such relevant equipment was installed on or after October 1, 1987".

o. In the PROPERTY NOT COVERED section, paragraph H is amended by removing the word "mobile" both times it appears and adding in its place both times the words "manufactured (i.e., mobile)" and by removing the words "and affixed to a permanent site" and adding in their place the words "to a permanent foundation" and by adding before the words "foundation continuously" the word "permanent".

p. The PROPERTY NOT COVERED section is amended by removing paragraph J and redesignating paragraph K as J.

q. In the DEDUCTIBLES section, paragraph B is amended by removing the phrase ", the reasonable expenses incurred by the Insured pursuant to paragraph 'F' of Perils Excluded," and by removing the word "coverage" and adding in its place the words "expenses covered".

r. In the DEDUCTIBLES section, paragraph D is amended by removing the word "an" and the words "mobile home or".

s. In the GENERAL CONDITIONS AND PROVISIONS section, paragraph G is amended in the first sentence by removing the words "Permission is granted to" and adding in their place the words "The Insured may, at the Insured's own expense," and by removing between the words "and" and "complete" the word "to" and is further amended by removing the remainder of paragraph G after the first sentence.

t. In the GENERAL CONDITIONS AND PROVISIONS section, paragraph J is amended by removing in the sixth

sentence the words "received by the NFIP prior" and adding in their place the words "received at the office of the NFIP prior" and by removing in the seventh sentence both times they appear the words "by the NFIP" and adding in their place both times the words "at the office of the NFIP".

u. In the GENERAL CONDITIONS AND PROVISIONS section, paragraph M is amended by removing the word *"items"* in the italics heading and adding in its place the word *"coverage"*.

v. In the GENERAL CONDITIONS AND PROVISIONS section, paragraph P is amended by removing the phrase "protect the property from further damage," in the first sentence.

w. The GENERAL CONDITIONS AND PROVISIONS section is amended by adding paragraph W just above the sentence which reads in part "In witness whereof . . ." to read as follows:

* * * * *

W. Continuous Lake Flooding: Where the insured building has been flooded continuously for 90 days or more by rising lake waters and it appears that a continuation of this flooding will result in damage reimbursable under this policy to the insured building of the building policy limits plus the deductible, the Insurer will pay the Insured the building policy limits without waiting for the further damage to occur if the Insured signs a release agreeing (i) to make no further claim under this policy, (ii) not to seek renewal of this policy, and (iii) not to apply for any flood insurance under the National Flood Insurance Act of 1968, as amended, for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph W still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

Appendix C of Part 61—[Removed]

14. Part 61 is amended by removing Appendix C.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARDS AREAS

15. The authority citation for Part 65 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

16. Sections 65.3 and 65.4 are revised to read as follows:

§ 65.3 Requirement to submit new technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. Within six months of the date that such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

§ 65.4 Right to submit new technical data.

(a) A community has a right to request changes to any of the information shown on an effective map that does not impact flood plain or floodway delineations or base flood elevations, such as community boundary changes, labeling, or planimetric details. Such a submission shall include appropriate supporting documentation in accordance with this part and may be submitted at any time.

(b) All requests for changes to effective maps, other than those initiated by FEMA, must be made in writing by the Chief Executive Officer (CEO) of the community or an official designated by the CEO. Should the CEO refuse to submit such a request on behalf of another party, FEMA will accept written evidence from an initiator of a request indicating the CEO or designee has been informed of the request.

17. Part 65 is amended by adding §§ 65.5, 65.6, 65.7, 65.8, 65.9, 65.10, and 65.11 to read as follows:

§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

(a) *Data requirements.* In many areas of special flood hazard (excluding V zones) it may be feasible to elevate areas with earth fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of fill shall include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (e.g., County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, copies of the tax map or other suitable maps are required to aid FEMA in accurately locating the property.

(3) If a legally defined parcel of land is involved, a topographic map indicating present ground elevations and date of fill.

(4) If a structure is involved, a topographic map indicating structure location and ground elevations including the elevations of the lowest floor (including basement) and the lowest adjacent grade to the structure.

(5) Data to substantiate the base flood elevation. If FEMA has completed a Flood Insurance Study (FIS), that data will be used to substantiate the base flood. Otherwise, data provided by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Soil Conservation Service, state and local water resource departments, or technical data prepared by a registered engineer may be submitted. If base flood elevations have not previously been established, hydraulic calculations may also be requested.

(6) Where fill has been placed to raise the ground surface to or above the base flood elevation, it must be demonstrated that fill will not settle below the elevation of the base flood, and that the fill is adequately protected from the forces of erosion, scour, or differential settlement as described below:

(i) Fill must be compacted to 95 percent of the maximum density obtainable with the Standard Proctor Test method issued by the American Society for Testing and Materials (ASTM Standard D–698). This requirement applies to fill pads prepared for residential or commercial structure foundations and does not apply to filled areas intended for other uses.

(ii) Fill slopes for granular materials are not steeper than one vertical on one-and-one-half horizontal unless substantiating data justifying steeper slopes is submitted.

(iii) Adequate protection is provided fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less by covering them with grass, vines, weeds, or similar vegetation undergrowth.

(iv) Adequate protection is provided fill slopes exposed to flood waters with velocities during the occurrence of the base flood of greater than five feet per second by armoring them with stone or rock slope protection.

(b) *Certification requirements.* The items required in paragraphs (a)(3) and (4) of this section shall be certified by a registered professional engineer or licensed land surveyor. Items required in paragraph (a)(6) of this section shall be certified by the community's NFIP

permit official, a registered professional engineer, or an accredited soils scientist.

(c) *Submission procedures.* All requests shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

§ 65.6 Revision of base flood elevation determinations.

(a) *General conditions and data requirements.*

(1) The supporting data must include all the information FEMA needs to review and evaluate the request. This may involve performing new hydrologic and hydraulic analysis and delineation of new flood plain boundaries and floodways, as necessary.

(2) In performing new analysis and developing revised flooding information, the requester must assure that new flood elevations, flood plain boundaries, and floodways tie into those shown for areas not affected by the revisions. The new base flood elevations must correspond to within one-half foot of elevations in unaffected areas unless the requester provides a technical justification that such a tie-in is inappropriate.

(3) Revisions cannot be made based on the effects of proposed projects or future conditions.

(4) The datum and date of releveling, if any, to which the elevations are referenced must be indicated.

(5) NFIP maps will be revised when flood elevations change as a result of structural improvements, such as dams or other significant retention facilities. NFIP maps will be revised when discharges change as a result of the use of an alternative methodology or data, provided that the change is statistically significant as measured by a confidence limits analysis of the new discharge estimates.

(6) In order for an alternative hydraulic or hydrologic methodology to be accepted, any computer program used must be accepted for general use by a governmental agency or notable scientific body, must be well documented including a user's and programmer's manual, and must be available to the general user.

(7) A revised hydrologic analysis for flooding sources with established base flood elevations must include evaluation of the same recurrence interval(s) studied in the effective FIS, such as the 10-, 50-, 100-, and 500-year flood discharges.

(8) A revised hydraulic analysis for a flooding source with established base flood elevations must include evaluation of the same recurrence interval(s) studied in the effective FIS, such as the 10-, 50-, 100-, and 500-year flood elevations, and of the floodway. Unless the basis of the request is the use of an alternative hydraulic methodology, the analysis shall be made using the same hydraulic computer model used to develop the base flood elevations shown on the effective Flood Insurance Rate Map and updated to show present conditions in the flood plain. Copies of the input and output data from the original and revised hydraulic analyses shall be submitted.

(9) A hydrologic or hydraulic analysis for a flooding source without established base flood elevations may be performed for only the 100-year flood.

(10) A revision of flood plain delineations based on topographic changes must demonstrate that any topographic changes have not resulted in a floodway encroachment.

(11) Delineations of flood plain boundaries for a flooding source with established base flood elevations must provide both the 100- and 500-year flood plain boundaries. For flooding sources without established base flood elevations, only 100-year flood plain boundaries need be submitted. These boundaries should be shown on a topographic map of suitable scale and contour interval.

(b) *Data requirements for correcting map errors.* To correct errors in the original flood analysis, technical data submissions shall include the following:

(1) Data identifying mathematical errors.

(2) Data identifying measurement errors and providing correct measurements.

(c) *Data requirements for changed physical conditions.* Revisions based on the effects of physical changes that have occurred in the flood plain shall include:

(1) Changes affecting hydrologic conditions. The following data must be submitted:

(i) General description of the changes (e.g., dam, diversion channel, or detention basin).

(ii) Construction plans for as-built conditions, if applicable.

(iii) New hydrologic analysis accounting for the effects of the changes.

(iv) New hydraulic analysis and profiles using the new flood discharge values resulting from the hydrologic analysis.

(v) Revised delineations of the flood plain boundaries and floodway.

(2) Changes affecting hydraulic conditions. The following data shall be submitted:

(i) General description of the changes (e.g., channelization or new bridge, culvert, or levee).

(ii) Construction plans for as-built condition.

(iii) New hydraulic analysis and flood elevation profiles accounting for the effects of the changes and using the original flood discharge values.

(iv) Revised delineations of the flood plain boundaries and floodway.

(3) Changes involving topographic conditions. The following data, certified by a registered professional engineer or licensed land surveyor, shall be submitted:

(i) General description of the changes (e.g., grading or filling).

(ii) New topographic information, such as spot elevations, grading plans, or contour maps.

(iii) Revised delineations of the flood plain boundaries and, if necessary, floodway.

(d) *Data requirements for incorporating improved data.* Requests for revisions based on the use of improved hydrologic, hydraulic, or topographic data shall include the following data:

(1) Data that are believed to be better than those used in the original hydrologic analysis (such as additional years of stream gage data).

(2) Documentation of the source of the data.

(3) Explanation as to why the use of the new data will improve the results of the original analysis.

(4) Revised hydrologic analysis where hydrologic data are being incorporated.

(5) Revised hydraulic analysis and flood elevation profiles where new hydrologic or hydraulic data are being incorporated.

(6) Revised delineations of the flood plain boundaries and floodway where new hydrologic, hydraulic, or topographic data are being incorporated.

(e) *Data requirements for incorporating improved methods.* Requests for revisions based on the use of improved hydrologic or hydraulic methodology shall include the following data:

(1) New hydrologic analysis when an alternative hydrologic methodology is being proposed.

(2) New hydraulic analysis and flood elevation profiles when an alternative hydrologic or hydraulic methology is being proposed.

(3) Explanation as to why the alternative methodologies are superior to the original methodologies.

(4) Revised delineations of the flood plain boundaries and floodway based on the new analysis(es).

(f) *Certification requirements.* All analysis and data submitted by the requester shall be certified by a registered professional engineer or licensed land surveyor, as appropriate.

(g) *Submission procedures.* All requests shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

§ 65.7 Floodway revisions.

(a) *General.* Floodway data is developed as part of FEMA Flood Insurance Studies and is utilized by communities to select and adopt floodways as part of the flood plain management program required by § 60.3 of this subchapter.

(b) *Data requirements when base flood elevation changes are requested.* When a floodway revision is requested and involves a change to base flood elevations, the data requirements of § 65.6 shall also be applicable. In addition, the following documentation shall be submitted:

(1) Copy of a public notice distributed by the community stating the community's intent to revise the floodway or a statement by the community that it has notified all affected property owners and affected adjacent jurisdictions.

(2) Copy of a letter notifying the appropriate State agency of the floodway revision when the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP.

(3) Documentation of the approval of the revised floodway by the appropriate State agency (for communities where the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP).

(4) Engineering analysis for the revised floodway, as described below:

(i) The floodway analysis must be performed using the hydraulic computer model used to determine the proposed base flood elevations.

(ii) The floodway limits must be set so that neither the effective base flood elevations nor the proposed base flood elevations if less than the effective base flood elevations, are increased by more than the amount specified under § 60.3(d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(5) Delineation of the revised floodway on the same topographic map used for the delineation of the revised flood boundaries.

(c) *Data requirements for changes not affecting base flood elevation determinations.* The following data shall be submitted:

(1) Items described in paragraphs (b) (1) through (3) of this section must be submitted.

(2) Engineering analysis for the revised floodway, as described below;

(i) The original hydraulic computer model used to develop the established base flood elevations must be modified to include all encroachments that have occurred in the flood plain since the existing floodway was developed.

(ii) The floodway analysis must be performed with the modified computer model using the desired floodway limits.

(iii) The floodway limits must be set so that combined effects of the past encroachments and the new floodway limits do not increase the effective base flood elevations by more than the amount specified in § 60.3(d). Copies of the input and output data from the original and modified computer models must be submitted.

(3) Delineation of the revised floodway on a copy of the effective NFIP map and a suitable topographic map.

(d) *Certification requirements.* All analyses submitted shall be certified by a registered professional engineer. All topographic data shall be certified by a registered professional engineer or licensed land surveyor.

(e) *Submission procedures.* All requests that involve changes to floodways shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

§ 65.8 Review of proposed projects.

A community, or individual through the community, wishing FEMA's comments on whether a proposed project if built as proposed would justify a map revision may request a Conditional Letter of Map Revision in accordance with Part 72 of this subchapter. The data required to support such requests are the same as those required to support requests for revisions in accordance with §§65.5, 65.6, and 65.7, except as-built certification is not required.

§ 65.9 Review and response by the Administrator.

If any questions or problems arise during review, FEMA will consult the CEO, the community official designated by the CEO, and/or the requester for resolution. Upon receipt of a revision request, the Administrator shall mail an acknowledgement of receipt of such request to the CEO. Within 90 days of receiving the request with all necessary information, the Administrator shall notify the CEO of one or more of the following:

(a) The effective map(s) shall not be modified;

(b) The base flood elevations on the effective FIRM shall be modified and new base flood elevations shall be established under the provisions of Part 67 of this subchapter;

(c) The changes requested are approved and the map(s) amended by Letter of Map Revision (LOMR);

(d) The changes requested are approved and a revised map(s) will be printed and distributed;

(e) The changes requested are not of such a significant nature as to warrant a reissuance or revision of the flood insurance study or maps and will be deferred until such time as a significant change occurs;

(f) An additional 90 days is required to evaluate the scientific or technical data submitted; or

(g) Additional data are required to support the revision request.

§ 65.10 Mapping of areas protected by levee systems.

(a) *General.* For purposes of the NFIP, FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards that are consistent with the level of protection sought through the comprehensive flood plain management criteria established by § 60.3 of this Subchapter. Accordingly, this section describes the types of information FEMA needs to recognize a given levee system as providing protection from the base flood on NFIP maps. This information must be supplied to FEMA by the community or other party seeking recognition of such a levee system at the time a flood risk study or restudy is conducted, when a map revision under the provisions of Part 65 of this Subchapter is sought based on a levee system, and upon request by the Administrator during the review of previously recognized structures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how a structure or system will perform in a flood event.

(b) *Design criteria.* For levees to be recognized by FEMA, evidence that adequate protection has been provided against at least the base flood must be provided. The following requirements must be met:

(1) *Freeboard.*—(i) Riverine levees must provide a minimum freeboard of three feet above the water-surface level of the base flood. An additional one foot above the minimum is required within 100 feet on either side of structures (such as bridges) riverward of the levee or wherever the flow is constricted. An

additional one-half foot above the minimum at the upstream end of the levee, tapering to not less than the minimum at the downstream end of the levee, is also required.

(ii) Occasionally, exceptions to the minimum riverine freeboard requirement described in (b)(1)(i) above may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood elevation profile and include, but not necessarily be limited to an assessment of statistical confidence limits of the 100-year discharge; changes in stage-discharge relationships; and the sources, potential, and magnitude of debris, sediment, and ice accumulation. It must be also shown that the levee will remain structurally stable during the base flood when such additional loading considerations are imposed. Under no circumstances will freeboard of less than two feet be accepted.

(iii) For coastal levees, the freeboard must be established at one foot above the height of the one percent wave or the maximum wave runup (whichever is greater) associated with the 100-year stillwater surge elevation at the site.

(iv) Occasionally, exceptions to the minimum coastal levee freeboard requirement described in (b)(1)(iii) may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood loading conditions. Particular emphasis must be placed on the effects of wave attack and overtopping on the stability of the levee. Under no circumstances, however, will a freeboard of less than two feet above the 100-year stillwater elevation be accepted.

(2) *Closures.* All openings must be provided with closure devices that are structural parts of the system during operation and designed according to sound engineering practice.

(3) *Embankment protection.* Engineering analyses must be submitted that demonstrate that no appreciable erosion of the levee embankment can be expected during the base flood, as a result of either currents or waves, and that anticipated erosion will not result in failure of the levee embankment or foundation directly or indirectly through reduction of the seepage path and subsequent instability. The factors to be addressed in such analyses include, but are not limited to: expected flow velocities (especially in constricted areas); expected wind and wave action; ice loading; impact of debris; slope protection techniques; duration of flooding at various stages and velocities; embankment and foundation materials; levee alignment, bends, and transitions; and levee side slopes.

(4) *Embankment and foundation stability.* Engineering analyses that evaluate levee embankment stability must be submitted. The analyses provided shall evaluate expected seepage during loading conditions associated with the base flood and shall demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability. An alternative analysis demonstrating that the levee is designed and constructed for stability against loading conditions for Case IV as defined in the U.S. Army Corps of Engineers (COE) manual, "Design and Construction of Levees" (EM 1110–2–1913, Chapter 6, Section II), may be used. The factors that shall be addressed in the analyses include: depth of flooding, duration of flooding, embankment geometry and length of seepage path at critical locations, embankment and foundation materials, embankment compaction, penetrations, other design factors affecting seepage (such as drainage layers), and other design factors affecting embankment and foundation stability (such as berms).

(5) *Settlement.* Engineering analyses must be submitted that assesses the potential and magnitude of future losses of freeboard as a result of levee settlement and demonstrate that freeboard will be maintained within the minimum standards set forth in paragraph (b)(1) of this section. This analysis must address embankment loads, compressibility of embankment soils, compressibility of foundation soils, age of the levee system, and construction compaction methods. In addition, detailed settlement analysis using procedures such as those described in the COE manual, "Soil Mechanics Design—Settlement Analysis" (EM 1100–2–1904) must be submitted.

(6) *Interior drainage.* An analysis must be submitted that identifies the source(s) of such flooding, the extent of the flooded area, and, if the average depth is greater than one foot, the water-surface elevation(s) of the base flood. This analysis must be based on the joint probability of interior and exterior flooding and the capacity of facilities (such as drainage lines and pumps) for evacuating interior floodwaters.

(7) *Other design criteria.* In unique situations, such as those where the levee system has relatively high vulnerability, FEMA may require that other design criteria and analyses be submitted to show that the levees provide adequate protection. In such situations, sound engineering practice will be the standard on which FEMA will base its determinations. FEMA will also provide the rationale for requiring this additional information.

(c) *Operation plans and criteria.* For a levee system to be recognized, the operational criteria must be as described below. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual, a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or when the manual for a previously recognized system is revised in any manner. All operations must be under the jurisdiction of a Federal or State agency or a community participating in the NFIP.

(1) *Closures.* Operation plans for closures must include the following:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists for the completed operation of all closure structures, including necessary sealing, before floodwaters reach the base of the closure.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provisions for periodic operation, at not less than one-year intervals, of the closure structure for testing and training purposes.

(2) *Interior drainage systems.* Interior drainage systems associated with levee systems usually include storage areas, gravity outlets, pumping plants, or a combination thereof. These drainage systems will be recognized by FEMA on NFIP maps for flood protection purposes only if the following minimum criteria are included in the operation plan:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists to permit activation of mechanized portions of the drainage system.

(ii) A formal plan of operation including specific actions and

assignments of responsibility by individual name or title.

(iii) Provision for manual backup for the activation of automatic systems.

(iv) Provisions for periodic inspection of interior drainage systems and periodic operation of any mechanized portions for testing and training purposes. No more than one year shall elapse between either the inspections or the operations.

(3) *Other operation plans and criteria.* Other operating plans and criteria may be required by FEMA to ensure that adequate protection is provided in specific situations. In such cases, sound emergency management practice will be the standard upon which FEMA determinations will be based.

(d) *Maintenance plans and criteria.* For levee systems to be recognized as providing protection from the base flood, the maintenance criteria must be as described herein. Levee systems must be maintained in accordance with an officially adopted maintenance plan, and a copy of this plan must be provided to FEMA by the owner of the levee system when recognition is being sought or when the plan for a previously recognized system is revised in any manner. All maintenance activities must be under the jurisidiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance. This plan must document the formal procedure that ensures that the stability, height, and overall integrity of the levee and its associated structures and systems are maintained. At a minimum, maintenance plans shall specify the maintenance activities to be performed, the frequency of their performance, and the person by name or title responsible for their performance.

(e) *Certification requirements.* Data submitted to support that a given levee system complies with the structural requirements set forth in paragraphs (b)(1) through (b)(7) of this section must be certified by a registered professional engineer. Also certified as-built plans of the levee must be submitted. In lieu of these requirements, a Federal agency with responsibility for levee design may certify that the levee has been adequately designed and constructed to provide protection against the base flood.

§ 65.11 List of communities submitting new technical data.

This section provides a cumulative list of communities where modifications of the base flood elevation determinations have been made because of submission of new scientific or technical data. Due to the need for expediting the modifications, the revised map is already in effect and the appeal period commences on or about the effective date of the modified map. An interim rule, followed by a final rule, will list the revised map effective date, local repository and the name and address of the community Chief Executive Officer. The map(s) is (are) effective for both flood plain management and insurance purposes.

PART 70—PROCEDURES FOR MAP CORRECTION

18. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 70.1 [Amended]

19. Section 70.1 is amended by removing the last two sentences and by adding the following two new sentences in place thereof:

* * * These procedures shall not apply when there has been any alteration of topography since the effective date of the first NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of Part 65 of this subchapter.

§ 70.3 [Amended]

20. Section 70.3 is amended as follows:

a. In paragraph (b) (2) (i) by adding after the word "contours" and before the comma the words "in relation to the National Geodetic Vertical Datum (NVGD) of 1929".

b. By removing the last sentence of paragraph (b)(4).

21. Part 70 is amended by adding § 70.9 to read as follows:

§ 70.9 Review of proposed projects.

An individual who is proposing to build on that portion of a property that may be inadvertently included in an area of special flood hazard may request a Conditional Letter of Map Amendment in accordance with Part 72 of this subchapter. The data required to support such requests are the same as those required to support requests for final Letters of Map Amendment in accordance with 70.3, except as-built certification is not required.

22. Part 73 is added to 44 CFR Chapter I, Subchapter B to read as follows:

PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Sec.

73.1 Purpose of part.
73.2 Definitions.
73.3 Denial of flood insurance coverage.
73.4 Restoration of flood insurance coverage.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 73.1 Purpose of part.

This part implements Section 1316 of the National Flood Insurance Act of 1968.

§ 73.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a "duly constituted State or local zoning authority or other authorized public body" means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, "State or local laws, regulations or ordinances intended to discourage or restrict development or occupancy of flood-prone areas" are measures such as those defined as "Flood plain management regulations" in § 59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

§ 73.3 Denial of flood insurance coverage.

(a) No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in floodprone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Administrator for the denial of insurance.

(d) A valid declaration shall consist of

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

§ 73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Administrator and shall consist of

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

PART 76—[REMOVED]

23. By removing and reserving Part 76.

Dated: March 24, 1986.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 86-6668 Filed 3-27-86; 8:45 am]

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March 28, 1986

Part V

Department of Agriculture

Food and Nutrition Service

7 CFR Chapter II

Food Stamp Program; Eligibility, Certification and Notice Provisions and Technical Amendments; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 through 285

[Amdt. No. 269]

Food Stamp Program; Eligibility, Certification and Notice Provisions and Technical Amendments of 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final action implements as final regulations several earlier publications of both proposed and interim Food Stamp Program rules. These regulations are the result of the 1982 Omnibus Budget Reconciliation Act, the 1981 Food Stamp Act Amendments and various efforts by the Department to streamline existing regulations in order to reduce Program costs and simplify administration. This action includes provisions on the following: (1) Sponsored aliens; (2) eligibility criteria; (3) mass changes; (4) notices of adverse action; (5) expedited service; (6) joint food stamp/public assistance processing; (7) recertification; and (8) resources. This action also includes technical amendments enacted by the Food Security Act of 1985 which: (1) Changes the definition of the Thrifty Food Plan, (2) changes certain elements used in making adjustments to the shelter and standard deductions, and (3) changes references to certain sections of the Immigration and Nationalization Act as to who constitutes an eligible alien for the Food Stamp Program to conform with current Immigration laws. Additional technical amendments are also included to: (1) Correct errors in spelling, grammer, regulatory references and typographical errors; (2) provide consistency or conformity with other regulatory provisions; and (3) reinstate provisions unintentionally removed from the regulations by previous rulemaking actions. These technical amendments affect Program definitions, addresses, record retention, implementation, authorized representatives, application processing, work registration, reporting and acting on charges in household eligibility or benefit level, fair hearings and monthly reporting/retrospective budgeting.

DATES: The provision at § 273.7(n)(1)(v) is effective retroactive to October 3, 1981. The remaining provision of this final action are effective April 28, 1986 and is to be implemented by State agencies no later than July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexander, VA 22302, or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

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

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this final action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Potential and current participants will be affected because of changes to recertification procedures, to notices of adverse action and mass changes, to work registration provisions, and resource provisions. Provisions on expedited service, sponsored aliens, joint food stamp/public assistance cases and eligibility criteria which were issued in interim final form have had only minor changes which will not significantly affect potential and current participants. The technical amendments addressed in this final action do not change the principles nor the policy intent of the provisions affected.

Public Participation and Effective Date Justification

The provisions in this action related to the definition of the Thrifty Food Plan (§ 271.2), adjustments to the standard deduction (§ 273.10(d)(7), adjustments to the shelter deduction (§ 273.10(d)(8), and changes to certain eligible alien provisions (§ 273.2(f)(l)(ii) and § 273.4) are being finalized without prior notice of proposed rulemaking and opportunity for public comment. The provisions cannot be altered or changed by public opinion as they are mandated by the Food Security Act of 1985 (Pub. L. 99–198) signed into law on December 23, 1985. The provisions are of a technical nature and are not expected to impact on the delivery of benefits to Food Stamp Program applicants or participants nor on the administration of the Program by State welfare agencies. For these reasons, the Department has determined, in accordance with 5 U.S.C. 552(b), that notice of proposed rulemaking is unnecessary and contrary to the public interest.

Paper Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in the sponsored aliens provisions of this action have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB approval number for the requirements concerning the provisions is OMB #0584–0064. The remaining provisions of this action do not have any reporting or recordkeeping requirements.

This final action puts the following publications issued earlier as proposed or interim rules into final regulatory form: *Resource and Financial Eligibility Criteria*, proposed rule published November 19, 1982, at 47 FR 52185; *Recertification of Eligible Households*, proposed rule published November 30, 1982, at 47 FR 53878; *Notice of Adverse Action and Mass Change*, proposed rule published December 28, 1982, at 47 FR 57725; *Amendments to Food Stamp Program Mass Change Rules and Coordinating Cost of Living Adjustments*, proposed rule published April 8, 1983, at 48 FR 15266; *Tightened Expedited Service Eligibility*, interim rule published November 30, 1982, at 47 FR 53828; *Sponsored Aliens*, interim rule published December 10, 1982, at 47 FR 55463; *Eligibility Criteria and Reduction or Termination of Benefits*, interim rule published December 14, 1982, at 47 FR

55903; and *Joint Food Stamp/Public Assistance Case Processing*, interim rule published April 1, 1983, at 48 FR 13955.

Each of these rulemakings will be discussed and the comments received on each analyzed in separate sections of this preamble. The proposed regulations are discussed first, followed by the interim rules. Each group is in chronological order. While all comments received were reviewed, only those which are significant to the particular rule are discussed. Among the comments not discussed are those which address issues the Department has not discretion over, those which are purely technical, and those which concern issues no longer relevant to the final rulemaking. An explanation of the rationale and purposes of the rules was provided in the preambles to the nine interim and proposed rulemakings. A full understanding of the basis of this final rule may require reference to the preambles of the proposed and interim rulemaking listed above.

Resources/Financial Eligibility Criteria

On November 19, 1982, the Department published a rule at 47 FR 52185 proposing several changes in the treatment of resources and income for food stamp eligibility purposes. These changes included: (1) Simplification of valuation procedures for "excess" vehicles; (2) a limitation on the exclusion of licensed vehicles used for subsistence hunting and fishing; (3) simplification of the rental property exclusion; (4) clarification of procedures for handling assistance payments which require work as a condition for receipt; and (5) clarification of the procedures for handling certain educational grants.

A total of 27 commenters submitted suggestions and comments in response to the November 19, 1982 proposed rule. The provision at § 273.8(c)(iv) of the proposed rule which clarified procedures for handling certain educational grants will be published in a separate rulemaking in order to address related provisions recently enacted by the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985). The remaining provisions in the proposed rule which received significant comments are discussed by subject below.

Licensed Vehicles—Section 273.8(h)

Under the proposed rule, all nonexcluded licensed vehicles would be assessed for fair market value. For each household, the current fair market value test would be applied to: (1) One licensed vehicle used for general household transportation, and (2) any licensed vehicle used to transport household members to and from employment or training preparatory to employment, or to seek employment in compliance with job search requirements. For these vehicles, the value of any individual vehicle in excess of $4,500 would be counted as a household resource. All other nonexcluded vehicles owned by household members would be considered excess vehicles. For all excess vehicles, the entire fair market value would be counted as a household resource. Under current procedures such vehicles are valued at the greater of the fair market value in excess of $4,500, or the equity value (fair market value less encumbrances).

Several commenters supported the proposal on the basis that it would simplify the handling of such vehicles. Several others expressed opposition to the Department's proposal on the basis that it would attribute to the household the value of resources which could not be converted to cash. A few commenters suggested that all nonexempt licensed vehicles should be counted only to the extent that fair market value exceeds $4,500. The Department has elected not to use this method of valuation as it could result in the exclusion of multiple low-value vehicles. After considering all the comments, the Department has elected to retain the current method of valuation using the greater of equity or fair market value in excess of $4,500 in lieu of the proposed method of counting a vehicle's entire fair market value. The Department believes the current method of valuation, although somewhat more complex than the proposed method, is understood by most caseworkers and is more equitable. Quality Control data confirms that the current methodology is not error-prone.

Some commenters expressed opposition to the Department's proposal to limit the exclusion of vehicles used for subsistence hunting and fishing to remote areas of Alaska. These commenters stated that households residing in rural areas outside of Alaska also engage in subsistence hunting and fishing and that the proposal would adversely affect such households. Other commenters supported the proposed limitation. This final rule adopts the proposed provision which limits the exclusion to Alaska. The Department notes that several provisions of the Food Stamp Act of 1977, as amended, provide special consideration for residents living in remote areas of Alaska. Alaska, unlike other States, contains a significant number of households dependent upon subsistence hunting and fishing.

A number of commenters suggested that all vehicles used for bona fide job search, whether or not mandated by Program requirements, should be counted as resources only to the extent fair market value exceeds $4,500. The Department has decided not to adopt this suggestion, as verification of voluntary job search would be very difficult. The Department also notes that the one household vehicle currently exempt from inclusion, except to the extent that fair market value exceeds $4,500, may be used for voluntary job search.

Some commenters suggested that vehicles which the household is making a good faith effort to sell should be excluded from consideration as resources. The Department has decided not to incorporate this suggestion into this final rule, as there is no indication of a significant problem in this area and it would be difficult for a State agency to confirm that a good faith effort to sell a vehicle is being made. Other commenters have noted that the proposed rules did not address the treatment of inoperable vehicles or vehicles used on Indian reservations and, therefore, exempt from licensing requirements. The proposed rule did not address the treatment of such vehicles since procedures for handling these vehicles are addressed in the current rules, at 7 CFR 273.8(g) and 273.8(e)(3), which provide that inoperable vehicles are to be valued on the basis of a statement from a reliable source such as a car dealer. This statement would be used to determine fair market value. Equity value would be determined by subtracting the amount of encumbrances from fair market value. Vehicles on Indian reservations are treated as if they were licensed.

Rental Property—Section 273.8(e)

Several commenters expressed support of the proposed rule excluding rental homes only if they are producing income consistent with fair market value. Other commenters expressed general opposition to the proposed procedures and some commenters noted that the rule did not address situations in which the rental property was temporarily not producing income, such as temporary vacancies. The Department is adopting the proposal with respect to rental property by this final rule without change. Although periods in which property is not producing income are not addressed in the rule, current procedures allowing the annualization of income will usually eliminate the impact of temporary vacancies. Rental property essential for

self-employment will continue to be excluded.

Treatment of Certain Assistance Payments—Section 273.9(b)

Several commenters supported the proposal to treat assistance payments from programs which require work as a condition of eligibility as unearned income. These commenters noted that the proposal would result in greater consistency between the Food Stamp and Aid to Families with Dependent Children (AFDC) Programs and would simplify program administration. One commenter expressed opposition to the proposed change noting that there is no requirement that the AFDC and Food Stamp Programs treat income in the same manner. Other commenters noted that not all workfare-type programs provide reimbursement for work-related expenses. The Department has elected to adopt the proposed language by this final rule without change. Many workfare programs do provide some form of reimbursement for workfare recipients. The Department does not feel that it would be appropriate to allow a deduction for reimbursable expenses which are not actually paid out of countable income. Reimbursements which do not exceed expenses are not counted as income. In addition, participants in workfare programs do not incur payroll taxes, one of the major work-related expenses covered by the earned income deduction. As is the case with reimbursed expenses, payroll taxes are not actually incurred by the household.

Recertification

On November 30, 1982, a proposed rule was published at 47 FR 53828 suggesting some changes to the recertification process. The basis for this proposal was both section 1318 of the Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97–98, enacted December 22, 1981) and recommendations of a task force on food stamp regulatory relief. There were several major changes in the proposal. The first was the revision of the timing for the Notice of Expiration (NOE). The Act was amended to require sending a NOE "prior to" rather than "immediately prior or at" the start of the last month of the certification period. The proposed rule defined "prior to" as 30 days before the end of the certification period except for one- to 3-month certification periods. For these short certification periods, the notice would be provided at the time of application. Second, the household would lose its right to uninterrupted benefits if it failed to attend an interview scheduled after the date an application was timely filed or failed to submit all necessary verification. The third major proposed change was to allow the State agency to set a deadline for submitting verification not provided at the recertification interview. The fourth proposed change was to make the NOE a State form, not an FNS form, within the requirements listed (FNS would continue to supply a model form). Finally, the rule proposed to delete the "good cause" provision for failure to timely reapply. Other minor changes will be noted later in discussing the comments.

A total of 25 comment letters were received on the proposal. Several commenters supported the proposal in general. A few comments were received asking that certification periods be eliminated, especially for monthly reporting/retrospective budgeting (MRRB) households. While the Act does allow some flexibility in the length of certification periods, it still limits us to establishing finite certification periods. Therefore these comments were not adopted.

Timing—Section 273.14(b)

A few commenters asked that the NOE be sent with the last issuance in a certification period. This cannot be done as section 11(e)(4) of the Act says the notice must be provided prior to the start of the last month of the certification period. However, this timing does allow sending a NOE with the second to the last issuance. We are modifying the standard of 30 days prior to the last month of certification to facilitate sending a NOE with the next to the last issuance for 31-day months. Several commenters objected to the State option allowing provision of the NOE at the time of certification for households with three-month certification periods. They felt this timeframe was unfair as NOEs could be sent up to 90 days before the end of the certification period while households with longer certification periods received their NOEs up to a maximum of 60 days before. The commenters felt that the 90 days was too far in advance. The Department agrees and has decided to retain the current rule instead of adopting the proposed change. The reason for the special timeframes for short certification periods is because the normal standards are not adaptable under the special circumstances of short certification periods. In this final rule, the NOE will be provided at the time of certification for a one-month certification. The NOE for two-month certification will be provided at the time of certification when certification is completed in the second month. Households with three-month certifications will receive their NOE's according to the normal standard. We feel that retaining the current rule assists households by shortening the time between receipt of the NOE and the time to reapply.

Contents of Notice—Section 273.14(b)(3)

As to the content of the NOE, one commenter asked that State agencies be allowed to develop their own forms without any regulatory list of requirements. We did not adopt this comment as we feel these requirements provide for more uniform treatment of households. A few commenters preferred continued use of an FNS-designed or approved NOE. The 1982 legislation amended Section 11(d) of the Act to prohibit the Department from requiring the State agency to submit forms (other than the application form) for prior approval. Therefore, this suggestion cannot be adopted. This rule revises the NOE to require that the State agency explain to the household that it must be interviewed and must provide all required verification in order to assure uninterrupted benefits. In addition, the NOE must tell the household that it is responsible for rescheduling the second interview if it misses the first interview.

Some commenters asked that State agencies be required, rather than encouraged, to include a new application form with the NOE and others asked that a list of items subject to verification and suggested verification documents for verification also be included. The requirement for including an application form was not adopted because the comments did not indicate, nor is the Department aware that lack of an application form has been shown to be any barrier to participation. Therefore, we are not reducing State agency flexibility in this area. As to the verification list, we encourage State agencies to develop and supply such a list, especially for new applicants. However, we do not want to require it for recertifications. Since these households have been interviewed before, they generally know what is subject to verification.

Uninterrupted Benefits—Section 273.14(c)

Current rules require that a household receive uninterrupted benefits if it timely files an application and timely meets the processing steps of the interview and of submitting all required verification. Otherwise, the household must show good cause for not being

timely in these steps to be entitled to uninterrupted benefits.

The proposal would delete the good cause provision. A few comments were received on the issue of providing uninterrupted benefits to households which fail to attend an interview or submit missing verification. One commenter asked if, even in the absence of the good cause provision, the State may still provide uninterrupted benefits to households that finally complete the necessary processing steps? The State agency could provide uninterrupted benefits if it has time to meet the deadline for the household's next normal issuance. In other words, the State agency may be able to provide uninterrupted benefits because the eligibility worker is able to promptly process the case when all the information is received and the deadline for providing a normal issuance has not passed. Other commenters suggested having the household lose its right to uninterrupted benefits for missed interviews scheduled *before* the date a timely application was due or for verification not provided by the deadline if that deadline falls before the date a timely application was due. These comments were not adopted as we feel that the Act protects the household's right to uninterrupted benefits if failures to meet any processing steps occur before the filing deadline.

Filing Deadline—Section 273.14(c)(1)

A number of comments were received on the filing deadline. Some commenters asked for some type of modification of the 15th of the last month of certification as the filing deadline. We are precluded from changing this provision because section 11(e)(4) of the Act sets the 15th as the filing deadline. One commenter wanted to retain the current deadline for submitting a timely reapplication for households for one- or two-month certification periods. The current provision is that households certified for one month or certified for two months in the second month have 15 days from receipt of the NOE to file a timely application. In these situations, it is impossible for the State agency and the household to meet the filing requirements in the Act. Therefore, a comparable standard is needed to determine when the household should receive uninterrupted benefits. We are retaining the current provision in this area to be consistent with our previously discussed retention of the current provision on when the NOE is issued to households with short certification periods.

State Agency Action—Section 273.14(d)

Under the proposal, the State agency must take prompt action to provide uninterrupted benefits to any household which timely files and which complies in a timely fashion with the interview and verification requirements. However, if a household timely files but then either fails to comply with the interview and/or verification requirements, it loses its *right* to uninterrupted benefits. As mentioned earlier, the current rules set forth good cause reasons for not meeting these requirements as well as requirements for State agencies on providing prompt or restored benefits (as appropriate) if good case for any failure is shown. In addition, the State agency has no obligation to reschedule an interview scheduled after the filing deadline nor must any reminder be given to households to prompt them to submit missing verification. If the household fails to be interviewed and/or provide needed verification, the household is sent a denial notice in accordance with the 30-day processing standard at 7 CFR 273.2(g) of current rules. The good cause provision was deleted in the proposal.

Several comments were received on the proposed changes to State agency action. One commenter asked that the State agency be permitted to deny the application immediately after the failure to meet one of the processing steps instead of waiting until the end of the processing period. The termination would then be rescinded if the household showed good cause. The proposal provided that the State agency either approve or deny the application 30 days after the application was filed or by the household's next normal issuance. This final rule retains the proposed options without change. However, the Department believes this comment on more immediate denial has merit and we will be looking at this concept for initial applications and will consider carrying it over to recertification applications. More immediate denials will be addressed in a separate rulemaking. Another commenter asked when a recertification application can be denied, how long it can be pending, and whether a notice of potential denial may be provided. This final rule revises the proposal to clarify that the application may be denied either at the end of the certification period or 30 days after the application was filed if the household fails to timely complete all processing steps as long as the minimum time was given to the household to provide any missing verification. Although "pre" denial notice is not required, it may be given.

The proposed rule provided that the State agency is required to schedule interviews for one-or two-month certifications within the first 15 days after receipt of the NOE. One commenter objected to this provision. We are deleting this proposed change and are retaining the provision in the current rules that the State agency has 30 days after the household's last opportunity to participate to complete the household's certification. This gives the State agency more flexibility, especially as the household has up to 15 days following receipt of the NOE to timely file for recertification. Another commenter asked that State agencies be exempt from providing benefits by the normal issuance date if the household requests an interview late in the last month of certification. We cannot do this as section 11(e)(4) of the Act requires that a household receive uninterrupted benefits if otherwise entitled as long as the household timely filed for recertification.

Other commenters asked that households be provided restored benefits if, due to a State agency error, the household loses a month's participation. Restored benefits in these instances are provided for at 7 CFR 273.14(e) of current rules. Another commenter requested that State agencies send a household a notice saying it missed its interview and that no further action will be taken unless the household reschedules the interview. The NOE has been revised to explain to the households all consequences of failure to take timely action.

One commenter asked that we clarify whether a household would be subject to proration if it submitted an application after the deadline for a timely reapplication but before the end of the last month of certification. This concern is covered at 7 CFR 273.10(a)(2) of current rules which was revised subsequent to the proposed rule. It states that proration would only be applicable if the household waited *beyond* its certification period to file for recertification.

An additional concern arose about applying proration if the deadline for providing missing verification falls after the end of the certification period. The final rule clarifies (also in 7 CFR 273.10(a)(2)) that if the household provides the missing verification within the timeframe allowed for in 7 CFR 273.14(c)(3) and is otherwise eligible and the deadline falls in the month after the certification period expires, proration would not apply. We feel that if the household has met the requirements, it should not be penalized if the deadline

for providing missing verification happens to fall after the certification period.

Missing Verification Deadline—Section 273.14(c)(3)

The proposal on setting a time limit for providing missing verification received a number of comments. One commenter asked if the notice of missing verification must be in writing. Other commenters asked that a separate notice be provided stating what verification is needed, the deadline for submission, a contact for additional information and the consequences for failure to submit the needed vertification. In the final rule, written notice is not required although it is not precluded. The requirements for providing missing verification are to be explained on the NOE if the State agency adopts the option for setting a deadline for submitting missing verification. We believe that it is more likely that the caseworker will discuss what verification is missing in the interview with household and, if needed, write out the information to assist the household.

The proposal provided for a 10-day minimum for submittal of missing verification from the initial request. One commenter expressed support for this 10-day *minimum*. Another comment was to allow the State agency 10 calendar days instead of five working days to issue benefits following submission of the missing verification if there is not sufficient time to provide benefits by the normal issuance date. We are not adopting this comment as five working days is the time limit used elsewhere in the rules including reinstatement if the household receives an immediate Notice of Adverse Action following a reported change as discussed in § 273.13(a)(3)(vi) of this final rule.

Good Cause—Section 273.14(f)

Another major proposed change to the recertification procedures was deletion of the "good cause" provision for filing a late application, missing an interview or otherwise not completing some aspect of the recertification process. Under the current rules, if the household showed, to the State agency's satisfaction, that the household's failure(s) was due to a good reason (i.e., illness, lack of transporation, misunderstanding the requirement, etc.), it would be provided uninterrupted benefits (if possible) or restored benefits if if did not receive any benefits for the month following the last month of certification. The proposed rule provided for deletion of the good cause provision. Several commenters asked that we retain good cause for failure to keep the first interview while six of these also asked that we retain good cause for failure to provide missing verification.

The household has a minimum of 15 days to file the application after receipt of the NOE (or up to 45 days if the NOE is mailed earlier) and a minimum of 10 days to provide the missing verification. This is adequate time for a household to reschedule a missed appointment and to either provide the missing verification or explain its absence. In addition, the household could use an authorized representative or the mail to file its application, to provide the missing verification, and an authorized representaive or telephone, in certain circumstances, could be used for the interview. This final rule retains the proposed change for deleting good cause as the NOE explains all deadlines, requirements and consequences and the alternative ways to file an application. This information on the NOE adequately explains and protects a household's rights. Also, if the State agency is at fault in causing delays (i.e, the NOE is sent late, an interview is not scheduled timely, etc.), benefits would be reinstated and/or restored.

Summary

This paragraph summarizes all the requirements in this final rule for State agencies and households on timely filing and processing.

Short Certification Periods (One Month or two Months if certification in second Month)

—NOE must be provided at time of certification
—household must file for recertification within 15 days of receipt of NOE
—State agency must notify household of decision on recertification application and for eligible households provide an opportunity to participate within 30 days of last issuance

Longer Certification Periods

—NOE must be provided no earlier than the second to last month of the certification period and no later than the first day of the last month of certification
—household must file for recertification by the 15th day of the last month of the present certification period
—State agency must approve or deny any timely application for recertification by the end of the household's current certification period if the household timely meets all processing steps concerning the interview and provision of verification.
—State agency may deny recertification applications at the end of household's current certification period if the household fails to appear for an interview or fails to provide needed verification (as long as the optional deadline for providing missing verification has elapsed).
—State agency may provide benefits either 30 days after the date the application was filed, at the next normal issuance date or even uninterrupted benefits to timely and eligible applications for recertification when the household does not timely meet other requirements for processing.

Uninterrupted Benefits

—household gets uninterrupted benefits if it timely files, is timely interviewed and timely provides needed verification
—household loses its right to uninterrupted benefits if it fails to timely meet the interview and/or verification requirements after the deadline for filing a timely application.

Notice of Adverse Action And Mass Changes

On December 28, 1982, a proposed rule was published at 47 FR 57725 which mainly concerned how much information was needed to give households an understanding of a pending mass change, the timing of this information, and the right of a household to continue its previous level of benefits if it believes an error has occurred. A mass change is one which affects all or a large portion of the caseload or a particular segment of the caseload (i.e., all recipients of supplemental security income (SSI)). Other technical changes were proposed which were discussed in the preamble to the proposal. We suggest a review of the proposal for any further information on those revisions.

In addition, the proposal included revisions to 7 CFR 273.13(b) of the rules to add two circumstances which would not require a notice of adverse action. One was voluntary termination requested by the household and the other was when the State agency determines that a household is moving from the project area.

A total of 35 comment letters were received on this proposal. A number of commenters supported the proposal in its entirety. Several commenters asked that we use this opportunity to clarify how a mass change is different from a notice of adverse action (NOAA). Changes which require use of a NOAA are usually strictly an individual change

due to circumstances only affecting a particular household and which must be tailored to the particular case. A mass change notice is a unique procedure to be used in lieu of a NOAA based on the nature of the changes. Changes handled under the mass notice procedures are "across the board," scheduled changes which can be done without the household's involvement. One factor in mass changes is the volume of cases but the main reason for establishing these procedures is that the changes are "across the board" e.g., a percentage increase to another programs' benefits rather than an individual's becoming eligible for another program's benefits or switching from one category of benefits to another (e.g., from social security disability to retirement benefits) a change which can only be accomplished by contact with the household. Other more specific comments along these lines were that 7 CFR 273.12(e)(1)(ii) of current rules should clarify that a NOAA *cannot* be used when a mass change occurs and to add references to 7 CFR 273.12(e) of current rules for the Black Lung and Veteran's Administration programs for those benefits that are subject to the mass change procedures. We have adopted these suggestions for clarity and consistency reasons.

One June 4, 1985, the Supreme Court ruled in favor of our policy on providing a mass change notice in lieu of a NOAA for federally instigated mass changes. In *Atkins* v. *Parker, et al,* the Court upheld our policy that a general informational notice may be given for mass changes due to statutory amendments. The Court stated that a mass change notice did not violate the due process clause as the household was notified of its rights to a fair hearing and uninterrupted benefits under certain circumstances in the notice. The Court held that the legislative process in itself "... provides all the process that is due."

Mass Change Notices—Section 273.12(e)(4)

The proposed rule added a paragraph to discuss notices to households in certain mass change situations. In this final rule, this paragraph is designated as paragraph (e)(4) instead of (e)(5). The proposed paragraph set out four minimum requirements for the notices of mass changes on public assistance and Federal benefit changes. These were:

—a description of the general nature of the change;
—examples of how the change would affect allotments;
—the month in which the change becomes effective; and
—information about the households' rights to a fair hearing and continued benefits.

In addition, the State agency would be required to provide as much specific information as it reasonably could at the time the notice is mailed. The minimum deadline would be the date the household was scheduled to receive the changed allotment. The State agency would also notify the household of the mass change as much before the issuance date as reasonably possible but no earlier than the time provided for a NOAA. If the State agency could not notify the household of the specific change prior to the effective date of the change, as much specific information was to be given as is reasonably possible.

Some commenters asked that Federal and State food stamp benefit and deduction changes be included in the mass change provisions requiring a notice. These changes currently do not require a written notice, just general publicity or a general notice unless the State agency opts to send an individual notice to all households. We did not adopt this suggestion, because the Department believes that such a change should be included in a proposed rulemaking to ensure that all affected or interested parties have an opportunity to comment. We may consider a revision in this area in the future.

A number comments were received on the contents of the mass change notice. Some commenters wanted the following additional information required:

—old and new benefit information;
—legal aid availability;
—contact person;
—liability for overissued benefits if the household loses the fair hearing;
—when benefits will be continued (i.e., error in computation or misapplication of law or regulation); and
—"sufficient" information to determine if an error was made.

Other commenters felt it would be misleading to use examples on the notice showing how a household with given circumstances might be affected. In response to these concerns, the Department emphasizes that: (1) The requirements listed in the rules are minimums and any State agency with the capability to do so may provide any additional information and (2) the way that State agencies generate these notices is varied—each local office may issue the notice either manually or through its computer system or the State agency may issue the notices for the State agency as a whole. Therefore, we must consider any information required on the notice within these constraints.

We are not requiring the State agency to include the old and new individualized benefit information or to show how the new benefit level was computed. This would be a major burden on State agencies for the reasons discussed above. In effect, this constitutes an individual notice. Of course, the State agency may provide such information. This final rule continues to require that the State agency provide broad examples of how households might be affected by the mass change. These examples are designed to explain to households the likely effect of the change, e.g., if their income increases by X then their food stamps *may* decrease to Y. Beyond that, the State agency may provide more definitive examples such as for household size, as well as for income or other such variations.

We did not adopt the comment on including legal aid availability on the notice because of the possibility of a Statewide notice. Legal aid may not be readily available in all areas of a State. However, State agencies may provide such information. State agencies will be required to include at least general information about a contact person, e.g. "Contact your local caseworker if you have any questions about this notice."

We are also adding requirements that the notice must explain under what circumstances benefits will be continued at the level in effect prior to the notice and what the household's liability is if it receives continued benefits pending a fair hearing which is decided in favor of the State agency. Beyond these requirements, State agencies may include any additional information they wish given staff, equipment, and time constraints.

The proposed rule required that State agencies provide as much specific information as possible at the time the notice was mailed. Several commenters addressed this issue, mostly negatively. A discussion on the timing of the notice is in the next section of this preamble. Some commenters wanted the specific notice omitted, while others wanted the State agency to have the *option* of issuing a specific notice, while still others supported only the general notice. Additional commenters felt that the terms "reasonably provide" and "reasonably possible" set forth in the proposal were undefinable terms.

This final rule deletes the language on the specific notice. We encourage State agencies to provide as much specific information on mass changes to households as possible. We believe this determination can only be made by State agencies. Further, we feel State agencies need to be given flexibility to design the most efficient and

informative notice possible given all the constraints previously discussed. It is in the State agencies' best interests to assist households as much as possible to avoid confusion, needless questions and misunderstandings about changes. Therefore, we are only specifying the minimum requirements in the rules, with inclusion of further information left to individual State agencies.

Time Standards—Section 273.12(e)(4) (ii) and (iii)

The proposed rule set two time standards for providing the mass change notice. The minimum requirement was that the State agency must notify the household of the mass change no later than the date the household is scheduled to receive the revised allotment. The State agency would be required to provide notice of the mass change to the household as much before the household's scheduled issuance date as reasonably possible. In any event, the State agency would not need to send the mass change notice any earlier than it would send the NOAA, which is 10 days before the date the change was effective. The earlier issuance of the notice was not simply intended to be a State agency option but was rather a requirement if the State agency could reasonably provide such notice earlier than the issuance date. If the specific notice could not be provided early (that is, up to 10 days before the issuance date), then the *specific* notice is to be provided no later than the normal issuance date. Taken together, these two requirements emphasize the contents of the notice (i.e., the more specific the better) over the timing of the notice (i.e., the earlier the better). However, the preference was an early, specific mass change notice.

Some commenters supported the general notice at the time of issuance. One commenter opposed providing the notice as late as the scheduled issuance date. A few commenters again expressed concern that the phrase "reasonably possible" was undefinable. This final rule retains the provision as it was proposed. As the proposed specific notice is no longer a requirement, State agencies are required to make every effort to provide the household with a notice of the mass change as early as possible. We are not defining "reasonably possible" as this varies from State to State, again depending on its capabilities. We feel that this must be defined on a State-by-State basis in consultation with the appropriate regional office. Further, we still believe that State agencies must have up to the issuance date to provide mass change notices because, in some instances, this may be the earliest date the information can be disseminated, given staff and computer capabilities coupled with when the information needed to make the changes is available.

Fair Hearings and Continuation of Benefits—Section 273.12(e) (5) and (6)

Several comments were received on the fair hearing and continuation of benefits provisions in the proposed rule. The proposed requirements were much the same as the current rules. Currently, a household may request a fair hearing on any grounds but will only receive continued benefits if the hearing request is based on a computational error or a misapplication of policy. The proposal retained these procedures but added a time limit for requesting a fair hearing in order to receive continued benefits which would be the same time limit for requesting continued benefits when a notice of adverse action is issued. In addition, the proposal set a time limit for the State agency to reinstate or continue benefits at the previous level. The current procedures were also reformatted in the proposal for clarification.

Some commenters suggested allowing fair hearings only for those requests which allege computational errors or policy misapplications, which are the limits for receiving continued benefits in a mass change situation. Another commenter wanted continued benefits given regardless of the basis of the fair hearing request. Still another commenter preferred no continued benefits and another wanted the Food Stamp Program to limit continued benefits for mass changes to the AFDC requirement which allows continued benefits for computational errors. In actuality AFDC broadly interprets this and allows continued benefits for misapplication of policy. Therefore, both programs have the same policy. Other commenters asked for a clarification in the regulations on the timing for a fair hearing request in order to receive continued benefits and on how long the State agency has to reinstate benefits upon a proper request. These timeframes—the NOAA standard or five days, respectively, were cited in the preamble to the proposed rule but not in the rule itself. For clarity, the timeframes are now cited in the rule. This final rule retains the right to *request* a fair hearing for any action about which it is aggrieved because, under the Act, a household has such a right to a fair hearing. However, benefits will still be continued or reinstated only if miscalculation of benefits or misapplication of policy is alleged. The program limits continued benefits to these two circumstances to avoid unnecessary delay in implementing a change and because these two circumstances are where an error is most likely to be made. Even in a mass change which is fairly standardized, it is possible that the State agency may make a computational or procedural error. Therefore, the household's benefits should be protected pending a resolution of any factual dispute.

There are also some minor conformance changes made to 7 CFR 273.12 (c) and (e) by this final rule. This final rule revises § 273.12(c)(2) on providing NOAAs for decreases of benefits due to a reported change to acknowledge by regulatory reference that certain exemptions to NOAAs exist at 7 CFR 273.13 (a) and (b) of current rules. Also 7 CFR 273.12(e)(2) is revised by this final rule to clarify which schedules and procedures for making mass changes apply to public assistance programs.

Notice of Adverse Action Exemptions—Section 273.13(b) (12) and (13)

The proposed rule added to the list of exemptions from a required NOAA when: (1) A voluntary request for termination is made by the household, either in writing or in the presence of a caseworker, and (2) the State agency determines, based on reliable information, that the household will not be residing in the project area at the time of its next allotment. Notice may be provided before the issuance date but the termination cannot be delayed in order to provide the household with a NOAA. One commenter asked that the general introduction to the exemptions section be clarified to say that NOAAs are not an option. This suggestion is adopted in the interest of national conformity. One commenter asked that the household be permitted to voluntarily request termination if it failed to report a change that would render it ineligible and an overissuance would result if it received its benefits. We believe that the proposal allows for such terminations as long as the request met the proposed criteria. Some commenters objected to including voluntary termination in the presence of a caseworker, preferring only written statements. We have amended this provision by adding a safeguard for households which may prevent accidental denials. Under this final rule, a household not providing a written voluntary withdrawal would be sent a written confirmation of its voluntary withdrawal. This would not entail NOAA rights but would explain to the household why no benefits would be

received and its right to reapply. Some commenters wanted an extension of this exemption to telephone requests, followed by a written confirmation. We have not adopted this suggestion as this provision could be abused by nonhousehold members calling in a voluntary withdrawal for a given household for malicious or vindictive reasons.

Lastly, the proposed rule contained a provision on households known to be leaving the project area in time to preclude receipt of their next allotment. One commenter wanted to restrict "reliable information" to the household's statement while another wanted action to be based only on a written statement from the household. These comments were not adopted as there are many other sources of "reliable information"—caseworkers from other programs, landlords, employers, etc. Some commenters opposed the provision but would prefer, at a minimum, written corroboration from the household. The notice to the household discussed in the proposal and carried over to this final rule is an adequate source of corroboration. One commenter wanted a definition of reliable information. We are not defining this in the rule as we feel this is best left to the individual circumstances although we feel we can provide some general guidance. Reliable information would be information from a source constituting independent verification, not requiring further verification. Another commenter asked if the State agency *must* terminate the household under these circumstances as the notification to the State agency may be received late in the month. State agencies are required to act upon notification that the household has moved from the project area within the same ten days as in other situations involving changes reported by the household. Another commenter asked if a notice of expiration (NOE) could be sent in lieu of termination if the household were moving within the same State. There is nothing in the current rules which precludes sending a NOE when the household leaves the project area if the State has developed a system for transferring cases within the State.

Amendments to Food Stamp Program Mass Change Rules and Coordinating Cost of Living Adjustments

Cost of Living Adjustments—Sections 273.9(b)(5)(iii) and 273.12(e)(3)

On April 8, 1983 at 48 FR 15266, a proposed rule was published concerning section 147 of the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253, enacted September 8, 1982). This section mandated that cost-of-living increases in certain Federal programs made between July 1 and September 30 not be counted as income until the following October. This would apply only to households participating in the month immediately prior to the month in which the cost-of-living increase was made. The proposed rule also discussed other mass change provisions which will be discussed later in this section of the preamble.

The delay in counting these cost-of-living increases specifically applied to the dates mentioned above. Therefore, this provision was superceded by Pub. L. 98-21, enacted April 20, 1983. Section 11 of that law shifted the cost-of-living adjustments to a calendar year basis instead of a fiscal year. In other words, adjustments are now effective for January 1 thus negating the exclusion for increases made on July 1 through September 30. On this basis, we are not making any final change to §§ 273.9 and 273.12 and will not be discussing the comments made on that section of the April 8, 1983 proposal.

Other changes proposed in the April 8, 1983 publication do, however, warrant final disposition. First, there are two proposed technical changes which are adopted by this final rule without change as no comments were received on them. An incorrect reference in the redesignated § 273.12(e)(2)(ii) is changed and § 273.12(e)(4) referring to implementation of the original rules of the 1977 Act is removed.

Mass Changes in Federal Benefits—Section 273.12(e)(3)

In addition to revisions concerning the cost-of-living increases, changes were proposed as to how and when the Food Stamp Program would handle changes in other Federal benefit programs. The current rules set standards for making a change depending on the State agencies' foreknowledge of the changes and its capabilities for making changes to food stamp benefits simultaneously with the public assistance (PA) changes. These standards are also carried over to mass changes in Federal benefits (e.g., supplemental security income (SSI), social security, etc.). The proposal required the State agency to establish procedures for cost-of-living increases and other mass changes for Retirement, Survivors, and Disability Insurance (RSDI), SSI, and for certain veterans and Railroad Retirement benefits in order to accommodate the delay in counting the cost-of-living adjustments (COLAs). In addition, the proposal clarified that monthly reporting households were to report these changes on the appropriate monthly report while non-MRRB households would not be required to report these changes as the State agency handles them. Households not subject to monthly reporting were not required to report these changes. The proposal also provided for mass changes in public or general assistance and Federal benefits (other than cost-of-living increases) to be effective for the third allotment issued to non-monthly reporting households following the effective date of the change.

A total of six comments were received on the proposed changes to § 273.12(e)(3). Some commenters expressed support for reflecting the change in the third month following the effective date of the change. One commenter asked to have the effective month of the change clarified to read "the second allotment following the month in which the change is effective," because of the effect of staggered issuance, i.e., varying the date within each month when a given group of households receive their benefits. In the proposal, for example, all households may have their RSDI benefits increased on the third of January but household A has its food stamp benefits issued on January 1 while household B has its food stamps issued on January 10. Therefore, household A would have its food stamp benefits adjusted in March while household B would not be affected until April. This final rule ties the change to the month, not the food stamp issuance date, in order to alleviate this inequity.

Some commenters requested clarification on how retrospective budgeting should be used in mass change situations. This final rule clarifies that the State agency is to follow whatever procedures it has in place for handling differences indicated on the monthly report form or for handling changes reported by households that do not submit monthly reports but that are subject to retrospective budgeting. One commenter wanted to require State agencies to give households prior notice of all changes resulting from COLAs in Federal benefits. COLAs are another example of a mass change and we have previously discussed the Department's rationale for the kind of notice given in these situations.

Tightened Expedited Service Eligibility

On November 30, 1982, the Department published an interim rule at 47 FR 53828 which imposed, for expedited service eligibility, a maximum allowable limit of $100 in liquid resources and limited expedited service to households with less than $150 in

monthly gross income, or destitute migrant or seasonal farmworker households. The interim rule defined expedited service as providing food stamp benefits no later than five calendar days from the application date and required verification of income and liquid resources to the extent practicable within the expedited service timeframes. These provisions were in accordance with the Food Stamp Act Amendments of 1982 (Pub. L. 97-253, section 170).

A total of 32 comments were received in response to the November 30, 1982 rule. Significant issues raised by the commenters are discussed below by subject.

Application Processing—Section 273.2(i)

Processing Time —Section 273.2(i)(3)

The majority of comments on the interim rule concerned the application processing timeframes for expedited service. Most of these comments centered around the question of providing coupons within five calendar days as opposed to five working days and the problem of intervening weekends and holidays. The Food Stamp Act Amendments of 1982 specified that State agencies must provide coupons to households qualifying for expedited service no later than five days after the date of application. To implement the amendments, the interim rule provided that, for eligible expedited service households, State agencies must mail or have available for pickup the households' authorization to participate (ATP) or coupons no later than the close of business on the fifth calendar day following the date of application. Some of the commenters felt that coupons or ATPs should be mailed on a timely basis to ensure that households have their food stamps no later than five calendar days after the date of application and others suggested that, if the fifth calendar day falls on a weekend or holiday, the issuance should be the last working day prior to the weekend or holiday. Still other commenters suggested that, if the fifth day falls on a weekend or holiday, the issuance should be made on the next working day. Most commenters felt that the five-day timeframe should be working days, to allow more time for verification.

The 1982 Food Stamp Amendments did not specify whether the five-day processing period should be working or calendar days; however, statements by members of Congress indicated that Congressional intent favored a calendar-day interpretation of the five-day provision (Congressional Record H6098, (daily ed. August 17, 1982)).

While the Department felt that the extension of the previous two- to three-working day timeframe for expedited service to the five-day timeframe would ease the State agencies' administrative burden and allow more time for verification, it was also concerned with the needs of those eligible for expedited service. The comments on the interim rule indicated that the rule, as written, does not take into consideration the problems of mailing time, weekends or holidays. Therefore, in practice, State agencies may have to go beyond the five-day timeframe or be forced to operate under an abbreviated timeframe to provide expedited service within the prescribed five-day period.

The Department considered several options in an attempt to be responsive to the comments, reflect the time difference between mailing and pickup of ATPs or coupons, and fulfill Congressional intent. To this end this final rule sets deadlines for State agencies to mail coupons or ATPs by the fourth calendar day or have ATPs or coupons available for pickup on the fifth calendar day after application but requires them to handle intervening weekends or holidays as follows: (1) If the fifth calendar day is Saturday, have the ATP or coupons available for pickup or mail them on the previous Friday; (2) if the fifth calendar day is Sunday, have the ATP or coupons available for pickup on the following Monday or mail them in the earliest outgoing mail on Monday morning; (3) if the fifth calendar day is a holiday which falls on Monday, have the ATP or coupons available for pickup on the following Tuesday or mail them in the earliest outgoing mail on Tuesday morning; and (4) if the fourth or fifth calendar day is a holiday which falls on a Friday, have the ATP or coupons available for pickup or mail them on the previous Thursday. This procedure differentiates between mailing ATPs or coupons and having them available for pickup. In addition, it specifies how to handle the five-day processing time when a weekend or holiday intervenes, based on when this occurs. It ensures that the adverse effect of a weekend or holiday occurring during the five-day processing period does not fall wholly on either the State agency or the recipient, thereby balancing the administrative considerations of State agencies against recipient needs in the expedited service process.

Household Eligibility—Section 273.2(i)(1) and (2)

One commenter suggested that expedited service be denied to households reapplying up to the 15th of the month after their certification period ends, to ensure that special treatment in the form of expedited service not be given to households which file late. The Department does not agree since the Act does not preclude such households from receiving expedited service if they meet the income and resource limits in the Act or are considered destitute migrant or seasonal farmworker households. Therefore, there is no change in this final rule since the current rules specify the criteria for being eligible for expedited service. Another commenter suggested that, once a household fails to complete the application process, (i.e., complete the application, be interviewed, verify identity), it should lose its entitlement to expedited service. The Department does not feel that any change is necessary in the rules to address this matter since, if a household does not comply with the requirements in the rules for completing its part of the application process within the established expedited service timeframes, the State agency would be unable to provide expedited service and would have to process the application within the normal 30 days of the date of application, in accordance with 7 CFR 273.2(g) of the rules.

Verification—Section 273.2(i)(4)

The interim rule provides that, in all cases, an applicant's identity must be verified before expedited benefits can be granted. The rule also states that all reasonable efforts should be made to verify household residency, income and resources, and other eligibility factors within the expedited service timeframes. However, with the exception of identity, any required verification which cannot be obtained within the established timeframes may be postponed if obtaining it would delay delivery of benefits beyond the five-day limit mandated by the 1982 amendments. A comment was received which questioned providing benefits to individuals whose eligible alien or citizenship status is questionable. The Department's position is that expediting the certification process to provide service within the standards established by the Act for those eligible for expedited service requires application of the limited verification standards of the interim rule. Initial screening should prevent the majority of ineligible households from participating. Also, with the exception of a one-time extension for migrants applying after the 15th of the month who need out-of-State verification, current rules require that full verification must take place prior to

the second benefit issuance. State agencies are encouraged to verify as much as they can, but only if such verification can be accomplished within the established expedited service timeframes. As stated above, any procedure which would delay the delivery of expedited service would run counter to the requirements of the Act for providing such service.

In the area of postponed verification, one commenter was concerned that verification provided on income, allowable deductions and resources for months beyond the month of application may not necessarily support eligibility for the month in which expedited service was provided. This commenter questioned whether providing verification to support the issuance in the month of application, as well as the continuing certification, should be required before further benefits are issued. It was suggested that a limit be put on the number of times a household may postpone verification of mandatory and questionable items, to avoid abuse of the rules which, the commenter felt, allow a household to participate on the basis of a series of postponed verifications if one-month certification periods are assigned. The Department feels that no change is necessary in the rule since it provides that postponed verification for the month of application must be completed before further benefits are issued. The current rules, at 7 CFR 273.2(i)(4)(iii)(A), clearly state that, when certified only for the month of application, households must reapply and complete the verification that was postponed. The rules, at 7 CFR 273.2(i)(4)(iv), also provide that there is no limit to the number of times a household can be certified under expedited procedures as long as prior to each expedited certification the household either completes the verification postponed at the time of the previous expedited certification or was certified under normal processing standards since that time.

Destitute Households—Section 273.10(e)

A commenter requested clarification as to whether migrants may qualify for expedited service under either of the conditions at 7 CFR 273.2(i)(1) of the rules which limits expedited service to households whose liquid resources do not exceed $100 and have less than $150 in monthly gross income or are destitute migrant or seasonal farmworker households. The interim rule, as written, provides that *either* households with less than $150 monthly gross income *or* destitute migrant/seasonal farmworker households are entitled to expedited service but only if *both* of these types of households have liquid resources which do not exceed $100.

Another commenter felt that language had been omitted from the interim rule specifying that State agencies should consider when a household received its last wages from a grower (rather than a crew chief) to determine whether a migrant household received income from a terminated source. This provision is already included in the rules at 7 CFR 273.10(e)(3)(vi).

One commenter suggested that any rule which contains the "destitute household" consideration for migrant or seasonal farmworker households should specify whether such consideration applies to all migrant farmer households or only those in the migrant stream. This comment arose from the fact that the monthly reporting/retrospective budgeting (MRRB) rules at 7 CFR 273.21(b)(1) provide that migrant farmworker households are excluded from retrospective budgeting as long as the households are in the migrant job stream. Historically, expedited service rules have never differentiated between migrants and seasonal farmworkers in or out of the job stream. Rules pertinent to such households have always applied whether they are home-based or in the job stream and this final rule continues that policy. The reference to households in the migrant job stream is specifically relevant to the MRRB rules only, which recognizes a legislative history of concern for the retrospective *budgeting* problems encountered with migrant households.

A question has been raised concerning households eligible for expedited service which apply after the 15th of the month, which is addressed at 7 CFR 273.2(i)(4)(iii)(B) of the rules. This section provides that, in cases where verification has been postponed, when households which applied for benefits after the 15th of the month provide the required postponed verification, the State agency shall issue the second month's benefits (or the third month's benefits, in the case of migrants needing out-of-State verification) within five working days from the receipt of the verification or the first of the second month, whichever is later. It has always been the Department's intention that the "first of the month" refers to the actual *first working day of the calendar month* and not the day benefits are issued in a State using staggered issuance. When a household is so needy that it is eligible for expedited service, and has applied so late in the month that it would only receive one-half of a normal month's benefits, it cannot afford to wait until late in the following month to receive a full month's issuance. For example, a household applying on July 20 and postponing verification, would be issued benefits within five days which would cover the period ending July 31. At that time, if the postponed verification has been provided, the household would be issued the second month's benefits within five working days from receipt of the postponed verification or August 1, whichever is later. A migrant household applying under similar circumstances but needing out-of-State verification would have its third month's benefits issued within five working days from the receipt of the postponed verification or September 1, whichever is later.

Although the current rules specifically address the procedures to be followed when households have postponed verification, they do not discuss how benefits should be issued to households applying after the 15th of the month who *have not* postponed verification. In some cases these households have been placed into a staggered issuance system before ever receiving a full month's benefits. It has always been the Department's intent that the procedures followed for these households be consistent with the rules prescribed for households with postponed verification so that households eligible for expedited service who provide required verification prior to certification also are assured of one month's benefits before being placed into their regular issuance pattern. Therefore, this final rule clarifies that the "first of the month" refers to the actual first working day of the calendar month, not the first day of the issuance month. This final rule also clarifies that this provision applies to *all* households eligible for expedited service, whether or not they have postponed verification.

Miscellaneous

One commenter felt that the requirement at 7 CFR 273.15 of the rules for a written notice to the household 10 days in advance of the date a hearing has been scheduled, places an impossible burden on State agencies in expedited service cases and suggested that a household waive its right to this notice in such cases. The commenter suggested that if the household did so waive, the hearing would be conducted with as much prior notice as reasonably possible; if not, the hearing need not be expedited. While it is true that the rules require the minimum of 10 days notice prior to a hearing, they also allow (at 7 CFR 273.15(1)) a household to request less prior notice to expedite the scheduling of a hearing. The Department feels that it is the household's right to

request less prior notice or wait the normal time to conduct a hearing. However, the State agency, under the same rules, at 7 CFR 273.15(i)(2), must expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached.

Sponsored Aliens

On December 10, 1982, the Department published an interim rule at 47 FR 55463 which set forth interim procedures to implement section 1308 of Pub. L. 97–98. Section 1308 of the 1981 Food Stamp Act Amendments (Pub. L. 97–98) enacted December 10, 1981 requires that a portion of the income and resources of an alien's sponsor and the sponsor's spouse be deemed as unearned income and resources of the alien in determining the eligibility of the household of which the alien is a member. In accordance with the Act, this provision is applicable for a period of three years from the date the alien entered the United States as a lawful permanent resident. The Act also provides that the alien and the sponsor are jointly liable for overissuances caused as a result of the sponsor providing incorrect information, unless the sponsor had "good cause" or was "without fault." The 1981 Food Stamp Act Amendments further require that USDA enter into an agreement with the Departments of State and Justice under which these Departments will inform sponsors and aliens of the requirements of the Act and provide information from the alien's file to State agencies, when necessary, for the State agency to determine the eligibility and benefit level of sponsored alien households. The Department of Agriculture received 15 comment letters. Significant issues raised by the commenters are discussed below by subject.

Deeming of Sponsor's Income/Resources—Section 273.11(h)(2), (h)(2)(iv), (h)(2)(v), (h)(2)(vi)

The interim rule provides that a portion of the gross income and resources of the sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be unearned income and resources of the alien for three years following the alien's admission to the U.S. as a lawful permanent resident. The preamble to the interim rule clarifies that gross income includes self-employment income, but does not include in-kind benefits or vendor payments made on behalf of the sponsor. The interim rule also clarifies that the income and resources of a sponsor's spouse will be considered even if they were not married at the time the sponsor signed an agreement to support the alien. In addition, the interim rule clarifies that, if the alien can demonstrate that his/her sponsor is responsible for other aliens who are participating or have applied for the Food Stamp Program, then the deemed income and resource amounts calculated would be prorated accordingly. Also, if an alien changes sponsors during the certification period, then deemed income and resource amounts would have to be recalculated to reflect the circumstances of the new sponsor.

Some commenters stated that the requirement to count the income and resources of the sponsor's spouse, even if they were not married at the time the sponsor signed a support agreement, contradicts contract laws. Contract laws are intended to protect a person from legal obligations incurred by their spouse. Counting the income and resources of a sponsor's spouse for Food Stamp Program purposes only affects the eligibility and benefit level of the alien and has no bearing on the spouse. The sponsor's spouse is not legally obligated under this rule should the sponsor die, nor is the sponsor's spouse liable should the sponsor willfully provide false information. Furthermore, the statute specifically provides that the income and resources of the sponsor's spouse be counted if the spouse is currently living with the sponsor. There is no indication from the language of the statute or accompanying legislative history that the spouses' income and resources would be excluded because he/she was not married to the sponsor at the time the sponsor signed a support agreement or because the sponsor's spouse was not required to also sign the support agreement. Therefore, the requirement of the interim rule at 7 CFR 273.11(h)(2) is adopted by this final rule without change.

Some commenters requested that all income exclusions (not just in-kind and vendor payments) allowed Program applicants be applicable in determining what constitutes gross income of a sponsor and his/her spouse. The Department has adopted this suggestion and appropriate language is added to the rules at 7 CFR 273.11(h)(1) by this final action. Adoption of this suggestion provides more consistent treatment of income with regard to sponsored aliens who are subject only to the Food Stamp Program sponsored alien rules and those subject to both AFDC's and the Food Stamp Program's sponsored alien rules.

Other commenters suggested changes to the method of prorating deemed income to several aliens sponsored by the same sponsor. The interim rule method of proration is to divide the sponsor's income by the number of such aliens who are Food Stamp Program applicants or participants. Commenters suggested dividing by the number of all other aliens sponsored or dividing by the number of those other aliens who are participating in other welfare programs, not just food stamps. The Department believes that consideration of other aliens sponsored by the same sponsor who are not participating in the Program is sufficient provided for by the method for computing deemed income. The computation provides a means for taking into consideration all dependents of a sponsor and the sponsor's spouse. If the sponsor is indeed supporting other aliens, they would be sufficiently covered based on the computation of deemed income as discussed below. Therefore, the interim method of prorating deemed income and resources at 7 CFR 273.11(h)(2)(v) is adopted by this final rule without change. However, paragraph (h)(2)(v) is redesignated as paragraph (h)(2)(vi) by this final rule.

One commenter asked that the rule clarify that in the event that a sponsored alien loses his/her current sponsor, the deemed income and resource amounts calculated based on information about that sponsor would continue to be used until such times as the alien obtained another sponsor, or the three-year period for applying the sponsored alien provisions expires, whichever occurs first. This suggestion is adopted and incorporated into the rules by this final rule at 7 CFR 273.11(h)(2)(vii), which is redesignated from 7 CFR 273.11(b)(2)(vi) of the interim rule. However, the provision has been expanded to further clarify that should the alien's sponsor become deceased the deemed income and resources of the sponsor and the sponsor's spouse shall no longer be applied to the alien, even if the sponsor has an estate and a surviving spouse.

Calculating Deemed Income—Section 273.11(h)(2)(i), (h)(2)(ii)

The interim rule provides that once the amount of the total combined income of the sponsor and the sponsor's spouse is determined, that income amount shall be reduced by an 18 percent earned income amount and reduced by the Food Stamp Program monthly gross income eligibility limit for a household equal in size to the sponsor's household. The size of the sponsor's household includes the sponsor, his/her spouse, and any other

person who is claimed as a dependent by the sponsor or the sponsor's spouse for Federal income tax purposes. If the alien has already reported gross income information on his/her sponsor under AFDC's sponsored alien rules, that income amount may be used for Food Stamp Program purposes. However, the only reductions that may be taken from this income amount are the 18 percent earned income reduction and the Program's gross income eligibility limit reduction as described above. Actual monies paid to the alien by the sponsor are considered income to the alien. However, only that portion of the total amount paid to the alien by the sponsor which exceeds the amount deemed is counted.

Several commenters requested that additional reductions from the sponsor's income be provided to take into account working expenses, medical expenses, living expenses, child support and/or alimony payments.

Consideration of working expenses is sufficiently provided for by allowing the current earned income deduction as specified in the Food Stamp Act of 1977, as amended. Applying a reduction to sponsor income of the Food Stamp Program's gross income eligibility limit based on the size of the sponsor's household provides sufficient consideration for other expenses incurred by the sponsor. In determining the size of the sponsor's household, the interim rule includes all persons who are claimed as a dependent for Federal income tax purposes even if they are not residing with the sponsor. Expanding the size of the sponsor's household in this manner provides a reasonable offset for expenses incurred by the sponsor. It has come to our attention, however, that AFDC's sponsored alien rules relating to the size of sponsor's household in computing deemed income includes those persons who *could* be claimed as dependents for Federal income tax purposes as well as those who *are* claimed. In order to provide consistency for caseworkers who must handle both food stamp and AFDC cases, the Department has decided to expand the definition of a dependent by this final rule to include persons who *could* be claimed as dependents for Federal income tax purposes.

Calculating Deemed Resources—Section 273.11(h)(2)(iii)

The interim rule provides that the portion of the resources of the sponsor and the sponsor's spouse to be deemed to be that of the alien shall be the total of their resources reduced by $1,500. Total resources are determined in the same manner as they are determined for all Program applicants. If the alien has already reported total resources for his/her sponsor due to AFDC's sponsored alien rules, the deemed resource amount which was calculated for AFDC purposes from that total resource amount may be used as the deemed resource amount for Food Stamp Program purposes.

Several commenters objected to the requirement that allows the State agency to use the deemed resource amount calculated for AFDC purposes. The commenters argued that AFDC counts more things as resources. We have carefully reviewed this matter and agree with the commenters concerns. Should a State agency choose to utilize the AFDC deemed resource option, there is a potential to attribute more of a sponsor's resources to the alien than would be attributed based on a FSP determination of what constitutes resources. Therefore, this final rule removes the option to allow State agencies to use the deemed resource amount calculated by AFDC.

Exemptions to Sponsored Alien Rules—Section 273.11(h)(3)

The interim rule provides for an exemption from the sponsored alien rules for an alien who is participating in the Program as a member of his/her sponsor's household, an alien sponsored by an organization or a group instead of an individual or an alien who is not required to have a sponsor under the Immigration and Nationality Act.

One commenter requested that this provision be expanded to include an alien whose sponsor is participating in the Program separate and apart from the alien. The Department has adopted this request by this final rule. In such a case, it is already known that application of the sponsored alien rule would result in no deemed income or resources to the alien. This additional exemption has been incorporated to simplify this point in the final rule.

Responsibility for Obtaining/Reporting Sponsored Alien Information—Section 273.11(h)(4)

The interim rule provides that the alien and the alien's spouse are responsible for supplying to the State agency information required to fulfill the requirements of the sponsored alien provisions. The preamble to the interim rule clarifies that the State agency may want to develop a form or adopt an existing one for use by aliens in obtaining information from their sponsor.

One commenter suggested that the State agency be required to provide a statement for the alien to present to the sponsor which explains the need for the information and the confidentiality of the information.

The Department does not believe that such a requirement is necessary. Under the provisions of a Memorandum of Agreement with the Departments of State and Justice, sponsors and aliens are informed about the requirements of the law governing sponsored aliens at the time the sponsor executes an affidavit of support or similar agreement on behalf of the alien. No other significant issues were raised by commenters. Therefore, the requirement of the interim rule is adopted by this final rule, but has been slightly revised to clarify that the alien is responsible for supplying information to the State agency and reporting certain changes that occur with regard to the information supplied to the State agency.

Verification of Sponsor Information—Section 273.11(h)(5)

The interim rule specifies what information is to be obtained from aliens by the State agency. One type of information to be obtained is the number of other aliens the sponsor is responsible for. The interim rule also provides that the State agency must verify the income and resource information obtained about the sponsor and the sponsor's spouse and the number of other aliens for whom the sponsor is responsible. All other information obtained from the alien may be verified, if questionable, in accordance with 7 CFR 273.2(f)(2) of the rules governing verification of questionable information.

One commenter requested that verification of the resources of the sponsor and the sponsor's spouse be handled in the same manner as verification of the resources of a Program applicant. State agencies need only verify resource of an applicant when questionable. The Department agrees with this request and appropriate language has been incorporated into the final rule.

In addition, it has come to the Department's attention that, in order for the State agency to prorate deemed income/resources to the alien when his/her sponsor is responsible for other aliens who are Food Stamp Program applicants or participants, an identifier must be provided to the State agency. Without an identifier, the State agency cannot search their records to determine how many of the aliens are Program applicants or participants. Therefore, this final rule incorporates a requirement that the alien must provide the names or other identifying factor

(such as an alien registration number) of other aliens for whom his/her sponsor is responsible. The rule also provides that if such information is not or cannot be obtained, the deemed income and resource amounts calculated would be attributed to the applicant alien in their entirety. Also, the State agencies have the option to wait until they have identified which of these other aliens are Program applicants or participants before verifying that the sponsor has indeed signed as affidavit of support or similar agreement on behalf of the aliens identified.

Awaiting Verification—Section 273.11(h)(6)

The interim rule provides that the alien and his/her spouse shall be ineligible to participate until such time as needed sponsor information is received or verified. One commenter questioned whether ineligibility in this regard should be based on waiting for receipt *and* verification of needed information. Another commenter questioned if the alien's spouse would be considered ineligible under this provision even if he/she is a U.S. citizen. The provision has been revised by this final rule to provide that only the alien shall be ineligible while awaiting receipt and/or verification of needed information in cases where the alien has not refused to do so. In cases where the alien refuses to provide and/or verify need information, other adult members of the alien's household are obligated to provide and/or verify needed information based on the provisions of section 6(c) of the Food Stamp Act and 7 CFR 273.2(d). If the household refuses to cooperate in this regard, the entire household would be ineligible to participate even if some members are U.S. citizens.

Collecting Claims Against Sponsors—Section 273.11(h)(8)(iii)

The interim rule provides specific steps that a State agency must follow in establishing and collecting claims against sponsors. One commenter asked if a sponsor has the right to a fair hearing. Some commenters requested that State agencies be allowed to develop their own procedures for establishing and collecting claims against sponsors. The Department believes that the sponsor is entitled to the same basic due process rights as any other person against whom a claim is established, including the right to a fair hearing. The interim rule provides basic due process rights, except for the right to a fair hearing. The interim provision has been expanded by this final rule to provide that the sponsor is entitled to a fair hearing to contest the amount of the claim or to contest a State agency's determination that incorrect information was provided and that the sponsor was at fault for providing the incorrect information.

Collecting Claims Against Alien Households—Section 273.11(h)(8)(iv)

As explained in the preamble to the interim rule, the Department issued a proposed rule on June 22, 1982 at 47 FR 27038 which would substantially revise Program requirements governing the pursuit of claims against households. At the time the sponsored alien rule was being developed, work had begun to finalize the proposed changes to the claims provisions. The interim rule on sponsored aliens was written to be compatible with the proposed rules governing claims against all types of households. Final rules governing the pursuit of claims against all types of households were published in the **Federal Register** on February 15, 1983 (at 48 FR 6836). Although the interim rule for establishing claims against sponsored alien households parallel the February 15, 1983 final rule governing the pursuit of claims against all types of households, the sponsored alien rule has been revised by this final rule to reflect specific terminologies adopted in the February 15, 1983 final rule.

Other Concerns

The preamble to the interim rule explains that the alien be required to report changes in the income, resources, and number of dependents of the sponsor and the sponsor's spouse. One commenter pointed out that the alien should also be required to report when he/she changes sponsors, as such a change directly affects eligibility. Another commenter requested that the reporting requirements be incorporated into the rules. Still another questioned the need to require State agencies to act on changes to sponsor information during the certification period. This final rule incorporates the reporting requirements to § 273.11(h)(4) and (h)(5) of this final action. The requirements provide that the alien must report changes to information about the sponsor and sponsor's spouse at recertification, report a change in income should the sponsor or sponsor's spouse change or lose employment or become deceased during the certification period, and report required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period.

One commenter asked if sponsored alien households are entitled to expedited service. Sponsored alien households are entitled to expedited service under the same conditions as all other Program applicants. Program applicants must provide information on their liquid resources and gross income to determine entitlement to expedited service. However, vertification of the information supplied may be postponed. For sponsored alien households, resources and gross income include the resources and gross income of an alien member's sponsor and sponsor's spouse.

Eligibility Criteria and Reduction or Termination of Benefits

On December 14, 1982 the Department published an interim rule at 47 FR 55903 which implemented several Food Stamp Program provisions from the Omnibus Budget and Reconciliation Act of 1982. The provisions of that Act included: (1) A change in the definition of disability to include disabled veterans and disabled surviving spouses and disabled surviving children of a veteran; (2) a change in the definition of household to provide that siblings living together must be considered one household; (3) a change in the definition of household to provide that certain elderly persons who are disabled and living with others may be a separate household from the others; (4) a restriction on the eligibility of students; (5) a change in the definition of resources to include certain retirement plans; (6) the extension of an option to State agencies to accept participation in AFDC as satisfaction of the Food Stamp Program's resource test; (7) the use of both the gross and net income eligibility standards for households with no elderly or disabled members; (8) the elimination of issuances of less than $10 for initial months of application and a change in the definition of an initial month; and (9) provisions to allow State agencies to promptly reduce or terminate household benefits with advance notice where the household actually submitted written information which directly resulted in the action.

The Department received 30 comment letters on the interim rule. Those comments which raised significant issues are addressed below by subject.

Definition of Elderly and Disabled—Sections 271.2, 273.2(i)

The interim rule expands the definition of "elderly or disabled member" to include: (1) veterans with a service-connected disability rated total or paid at the total rate; (2) veterans considered in need of regular aid and attendance or permanently housebound; (3) the surviving spouse of a veteran considered in need of regular aid and attendance or permanently housebound;

(4) the surviving child of a veteran considered to be permanently incapable of self-support; and (5) the surviving spouse or child of a veteran who is entitled to receive death benefits from the Veteran's Administration (VA) but not entitled to VA disability benefits provided that the spouse or child has a disability considered permanent under the Social Security Act.

This final rule revises the interim provisions to clarify that for those individuals mentioned in clauses (1) through (4) above, a determination of disability will be made by the VA and the State agency will need to obtain verification regarding the disability from the household. For those veterans and surviving spouses or children mentioned in clauses (2) through (4) above, proof of receipt of VA disability benefits is sufficient verification. For the veteran with a service-connected disability rated or paid as total, simply providing proof of receipt of VA disability benefits is not sufficient verification; the household must provide a statement from the VA which enables the State agency to verify that the disability is rated or paid as total by the VA.

For those surviving spouses or children mentioned in clause (5) above, the State agency shall use the most current list issued by the Social Security Admininstration which describes the disabilities considered permanent under the Social Security Act and determine by observation that the individual has one of the listed disabilities. However, the Department intends that caseworkers make disability determinations by observation only in the most obvious cases. If the disability is not obvious to the caseworker, the household would be required to provide a doctor's statement which enables the caseworker to verify that the individual is qualified for separate status based on disability. This verification procedure can be simplified by providing the household with a certification statement for the doctor to sign which lists the nonobvious disabilities and requests that the doctor certify that the individual in question has one of the listed disabilities.

The provisions are revised by this final rule to clarify the Department's intent and to provide that the State agency assist the household in obtaining verification under this provision in accordance with procedures outlined at 7 CFR 273.2(f)(5) of the rules.

Elderly and Disabled Living with Others—Section 273.1(a), 273.2(i)

The interim rule provides that certain elderly individuals who are disabled and living with others may be a separate household from the others, provided the gross income of the others they live with does not exceed 165% of the proverty line. This provision is applicable only to those elderly individuals who cannot purchase and prepare their own meals because they suffer from a disability considered permanent under the Social Security Act or because they suffer from a severe, permanent nondisease-related disability.

The preamble to the interim rule explains that State agencies are to make disability determinations based on a list published by the Social Security Admininstration of disabilities considered permanent under the Social Security Act. This procedure is consistent with those mentioned earlier for making similar disability determinations for certain surviving spouses and children of veterans. The interim rule provides that the case worker shall make the disability determination based on observation in the case of obvious disabilities or a doctor's statement for nonobvious disabilities. The interim rule also clarifies that the individual is responsible for obtaining the cooperation of the others he/she lives with in providing the necessary income information to the State agency and for providing (at State agency request) a doctor's statesment that he/she cannot prepare and purchase their own meals due to a severe, permanent disability.

Some commenters want the Department to provide examples of what constitutes a "nondisease-related" disability. Others felt that the reference to "nondisease-related" should be dropped as disabilities considered permanent under the Social Security Act include both disease and nondisease-related infirmities. Some commenters requested that State agencies be required to help the elderly and disabled person to obtain documentation. Again, commenters were concerned that caseworkers would be required to make medical judgments they are not qualified to make and that attempting to make such determinations by observation can only be done in the most obvious cases.

The Department has carefully considered this provision and its accompanying legislative history. The Act specifically references the term "nondisease-related" disability for this provision. The reference cannot be removed without specific legislative authority. However, as stated in the preamble to the interim rule, the Department believes that it is also important to keep in mind the intent of the legislative provision. The intent is to allow elderly persons who cannot purchase and prepare their meals because of age and its accompanying infirmities and *must* live with others, to be a separate household from the others, and that the Food Stamp Program can make a valuable contribution towards making it possible for such individuals to remain at home, rather than become institutionalized. Therefore, the Department intends that disability determinations be made based on the inability of the individual to purchase and prepare his/her own meals because of the disability. Thus, an individual under this provision would not qualify for separate status simply because he/she has a disability considered permanent under the Social Security Act, nor would separate status be denied to individuals who do not have a disability considered permanent under the Social Security Act simply because the disability is disease related. As with the disability provisions mentioned earlier for making disability determinations for the surviving spouse or child of a veteran, the Department intends that the caseworker make such determinations based on observation. If it is not obvious to the caseworker that the individual cannot purchase and prepare meals, the household is required to obtain a doctor's certification to enable the State agency to verify that the individual qualifies for separate household status based on the individuals inability to purchase and prepare his/her own meals. This procedure can be simplified by providing a certification statement for the doctor to sign which lists the nonobvious disabilities from the SSA list and requests that the doctor certify that the individual is unable to purchase and prepare meals because he/she suffers from one of the listed disabilities, or that the individual is unable to purchase and prepare meals because he/she suffers from related disability or suffers from some other severe, permanent disability.

This final rule revises the provisions to clarify the Department's intent.

Siblings Living Together—Section 273.1(a)

The interim rule provides that siblings (natural, adopted, half or stepbrothers and sisters) must be considered as preparing and purchasing meals together, even if they are not doing so.

Several commenters stated that treating siblings and stepsiblings alike is against the meaning of the Act and Congressional intent. The Department disagrees with these commenters. The Department can reasonably define "sibling." Congress did not provide any guidance as to what was meant by the

term "sibling." The Department defined the term to be compatible and consistent with the current provision that children living with their natural, adopted or stepparents (and vice versa) be considered as purchasing and preparing meals together, even if not doing so. Therefore, the interim provision is adopted by this final rule without change.

Boarders-Section 273.1(c)

An issue related to household definition arose from a policy question submitted by one of our regional offices. The question was whether a child over 18 living with an elderly or disabled parent and who pays compensation for room and board could be considered a boarder and therefore not included in determining the eligibility of their parent's household. 7 CFR 273.1(c)(1) states that persons listed in 7 CFR 273.1(a)(3) cannot be considered boarders. Those listed in § 273.1(a)(3) are non-elderly or disabled parents living with their children, children under 18, spouses and non-elderly or disabled siblings living together. Therefore, this reference back is confusing on whether or not boarder status can be given to children of elderly and disabled parents or to siblings living with elderly or disabled siblings.

The Preamble to final regulations on the Omnibus Reconciliation Act of 1981 (47 FR 52328, November 19, 1982) stated that under no circumstances should boarder status be granted to parents and children living together. There was no distinction made for the elderly or disabled. Therefore, we are revising 7 CFR 273.1(c)(1) by this final rule to further clarify our position.

Students—Section 273.5

The interim rule eliminated a previous eligibility provision which allowed students to participate based solely on the fact that they supported a spouse. The interim rule also restricted the eligibility of students with dependent children to those students responsible for the care of a dependent household member under age 6, or age 6 or older but under age 12 for whom adequate child care is not available.

Several commenters asked that the rule explain what is meant by the term "responsible for." They questioned whether this term meant physical care or financial care, or both. Others questioned whether more than one person in the household can obtain eligibility by claiming to be responsible for the care of the same dependent.

The Department believes that it is the intent of Congress that the student eligibility criteria based on responsibility for the care of dependents be consistent with work registration exemptions based on the same criteria (Senate Report 97–504, pg. 42). Traditionally, the work registration provision has always referred to the physical care of a dependent and has always been limited to allowing only one person to claim an exemption as the primary person responsible for the care of the dependent in situations where more than one person shares such responsibility.

Some commenters asked that the term "availability of adequate child care" be clarified or defined. There are too many possible variables between individual household circumstances regarding child care to establish a uniform definition of availability or adequacy of child care. State agencies should have the discretion to accept reasonable statements from the student that adequate child care is not available and to take other considerations into account such as location to nearest day care facility, availability of funds to pay for adequate child care, and so on. Therefore, this provision of the interim rule is adopted by this final rule without change.

Initial Month Recertifications—Section 273.10(a)(2)

The interim rule provides that, if a household submits an application for recertification any time after the last day of its certification period, then that month shall be considered an "initial month" and benefits would be prorated.

One commenter asked if benefits would be prorated in the case of households which are certified for one month. In such cases the household may reapply after the end of its certification period but within the time standard required by the notice of expiration issued to the household in accordance with 7 CFR 273.14 of the rules. The interim rule is revised by this final rule to clarify that benefits shall not be prorated for households that receive their notice of expiration at the time of certification if the household files for recertification after the end of its certification period, but within the time standards allowed by the notice of expiration, if the household is still determined eligible. We would also like to clarify that, if a household files an application prior to the end of its current certification period or the deadline set by the notice of expiration and is found ineligible for the first month of its new certification period, but eligible for subsequent months, proration would not apply as the application was filed in advance of the new certification period. Finally, we clarified that the level of benefits for recertifications are based on anticipated circumstances *except* for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2) of current regulations.

Immediate Adverse Action—Section 273.13(a)(3)

The interim rule also includes the provision of section 171 of Pub. L. 97–253 that gives State agencies an option to take immediate adverse action under certain circumstances. The interim rule permits State agencies to provide a notice of adverse action no later than the date a household receives or would have received its allotment. The following conditions are placed on this option: (1) The household had to have reported the information resulting in the reduction or termination; (2) the report had to be in writing; (3) the State agency must be able to make a determination based solely on the household's written information; (4) the household retains its right to a fair hearing; (5) the household retains its right to continued benefits if it requests a fair hearing within the time provided by a notice of adverse action; and (6) the State agency must reinstate a household's benefits at the previous level within five working days of the request for a fair hearing.

One commenter wanted the provision to be mandatory, not a State agency option. We are precluded from doing this by section 11(e)(10) of the Act. Another commenter suggested that the change report form be revised to explain that the household may be subject to immediate adverse action based on the information provided. We believe that this is unnecessary as the household will still receive a notice explaining the change even though the timing may be as late as the time the allotment would normally be received and because this might discourage the household's use of the report form. Of course, nothing would preclude a State agency which uses this option from putting such a statement on the change report form. Other commenters expressed concern with the constitutionality of the provision apparently because it shortens the notice period. We believe the rule provides procedures which adequately protect households' due process rights including the continuation or reinstatement of benefits and fair hearing rights.

One commenter supported the continuation of benefits provision but also asked for clarification of the time standard of requesting a fair hearing in order to receive continued benefits. The preamble to the proposed rule referred to use of the public assistance (PA)

standard while the rule itself mentioned the time period for a notice of adverse action. This final rule adopts, by regulatory reference, the provisions at 7 CFR 273.13(a)(1) which establishes the timing for fair hearing requests in order to receive continued benefits.

Other commenters asked if the information from the household could be provided orally, either in person or by telephone. We have not adopted this suggestion because the Act specifies that a "written report" must be the sole source of the reported change and we want to ensure that the household is fully aware of the consequences of making such a report, i.e., benefits are immediately terminated.

Other Concerns

Since the implementation of the interim rule, the Food and Nutrition Service has received several policy inquiries from State agencies with regard to the parent/child and sibling provisions at 7 CFR 273.1(a) of the rules.

It was pointed out that it was not clear from the interim rule, whether or not the spouse of the elderly or disabled parent or sibling would be considered to be in the household of the spouse or would remain with the children/siblings when separate household status is granted to a parent or sibling based on the age or disability exemptions of the parent/child and sibling rules. This final rule clarifies that in these cases, the spouse of the elderly or disabled parent or sibling must be considered a member of the elderly or disabled person's household. Congress intended to retain the current prohibition against making the spouse a separate household or a member of the other household. (H.R. Rep. No. 96-687, Aug. 2, 1982, p. 43.)

State agencies are also unclear as to whether the parent/child and sibling provisions of the interim rule take precedence over the provisions at 7 CFR 273.1(b) of the current rules regarding nonhousehold status. The interim rule could be interpreted to allow ineligibles to participate in the Program. The regulation states that "in no event shall nonhousehold status be granted to parents and children or siblings living together." This is further complicated by a final rule issued on February 15, 1983, which separated the nonhousehold status provisions at 7 CFR 273.1(b) of the rules to provide that there are two categories of nonhousehold members.

An individual who is determined to be ineligible need not be considered an eligible member of the household because the order of the interim rule suggests that parent/child and siblings living together can never be a separate household. The ineligible status of one member of the household need not break the household bond created by the parent/child and sibling provisions. Status as an "ineligible" person means that the household cannot receive benefits for that member. Therefore, the member cannot be counted in determining the size of the household for the purpose of comparing the household's income to the Program's income eligibility standards or for assigning a benefit level. The income and resources of such ineligible members are or are not considered available to the remaining household members in accordance in with 7 CFR 273.119 (c) and (d).

Inquiries have surfaced with regard to current provision that children under 18 who are under parental control of an adult household member cannot be a separate household. State agencies are confused as to the effect of this provision on the parent/child and sibling provisions of the rules. Under the parent/child rule, parents and children living together can be a separate household if the parent is elderly or disabled and preparing and purchasing meals separate from the child and a sibling can be a separate household from another sibling if one sibling is elderly or disabled and purchasing and preparing meals separately from the other sibling.

The parent/child provision of the Act restricts an individual over 18 years old, living with his parents from claiming separate household status because he/she purchases and prepares meals separately from the parents. The parent/child rule restricts separate household status with regard to older children. The current prohibition against allowing separate household status in the case of children under 18 years of age who are under the parental control of an adult member of the household remains unchanged. The interim rule adopted this same theory with regard to siblings living together. A sibling who is under the parental control of another sibling in the household cannot claim separate household status.

The Department is revising 7 CFR 273.1(a) and (b) by this final rule in its entirety to better clarify these issues. Conforming amendments are also being made to the rule at 7 CFR 273.4 (b), (c), and (d), 273.5(b)(3), 273.8(j) and 273.11 (c) and (d).

Additionally, as a result of inquiries for State agencies, the Department is amending the rules at 7 CFR 273.1(c) to clarify that residents of a commercial boardinghouse are ineligible to participate in the Program. All other boarders are ineligible to participate in the Program independent of the household providing the board. These boarders may participate as a member of the household providing the board (at the household's option).

Joint Food Stamp/Public Assistance Case Processing

On April 1, 1983, the Department published an interim rule at 48 FR 13955 allowing each State agency the option of permitting public assistance (PA) and general assistance (GA) households to have their food stamp applications included in their PA and GA applications, and to permit food stamp applicants to be certified eligible based on information in their PA and GA casefile, to the extent reasonably verified information is available in the file. This change was required by the Food Stamp Amendments of 1982 (Pub. L. 97-253, section 173). The interim rule also revised the rules to eliminate indefinite certification periods.

A total of 14 comments were received in response to the April 1, 1983 rule. Because of the time that has elapsed since the publication of the interim rule and receipt of the comments, the Department contacted various regional offices to determine if problems anticipated by the commenters have actually been experienced by State agencies in implementing the interim rule. The Department's findings on significant issues are discussed below by subject.

Application Processing—Section 273.2(j)

One commenter was concerned that the interim rule could be interpreted to mean that, where a joint PA/food stamp application is used, households could be subject to the criminal penalties of one or the other program, but not for both. Accordingly, this final rule revises the wording of the interim provision to clarify that households are subject to the criminal penalties of both programs for false statements.

Some commenters felt that, when a new food stamp application is filed after a PA application has been denied, it should be specified that the filing date for the new application should be the original filing date of the joint application. Analysis of the regional offices' State surveys indicates that most of the commenting regions have been using joint PA/food stamp applications and are experiencing few, if any, application processing problems. In cases where PA applications are subsequently denied, the general procedure has been to continue food stamp eligibility based on the original joint application using the original filing date and all documentation relevant to

food stamp eligibility, including documentation obtained subsequent to the application and/or used in the PA determination. To cover situations where new applications are required, language has been added to this final rule to clarify that, when a new application is filed after denial of a PA application and within 30 days of the original filing date, the filing date of the new application will be the original filing date of the joint application. This will clarify that, if clients file within the 30-day processing time, they will have opportunity to receive benefits prorated from the date of the original application.

A commenter suggested that the rule be more specific in the area of notifications to households. This commenter wanted the rule to specify that State agencies must notify households whose PA applications are denied that they must reapply for food stamps. As discussed above, the interim rule allows State agencies the option of either requiring that applicants for food stamps file a new application if their PA application is denied, or using the original application filed jointly for PA and food stamps. The Department assumes, however, that State agencies requiring new applications are notifying clients of this fact when their PA application is denied. For the purpose of clarity we are adding by this final rule the requirement that State agencies must notify households of the need for a new application.

Certification Periods—Section 273.10(f)

Several commenters were concerned about the issue of PA/food stamp coordination when Aid to Families with Dependent Children (AFDC) redeterminations and food stamp recertifications occur at different times. Comments addressed potential problems in handling food stamp certification periods when PA redeterminations occur prior to the end of assigned food stamp certification periods, as well as the length of food stamp certification periods and redetermination procedures as they relate to attempted PA/food stamp coordination.

In the area of certification periods and redetermination, the post-implementation regional inquiries have indicated that State agencies are not experiencing any significant problems with definite certification periods. To avoid the anticipated problems with the timing of AFDC redeterminations, State agencies are exercising flexibility in assigning initial food stamp certification periods, which can run from three to 12 months. Manual or automated tracking systems are ensuring timely food stamp recertification even when the PA redeterminations are not timely. In some cases, State agencies are determining when the month after the household's PA redetermination occurs and are setting that month for the time of the food stamp recertification. Others are completing food stamp and PA redeterminations simultaneously at six or twelve-month intervals.

In view of the above findings it is evident that State agencies, operating under the requirement for definite certification periods, are able to fulfill the objective of the interim rule of assigning certification periods to PA/food stamp households so that, to the greatest extent practicable, the food stamp recertification and PA redetermination occur at the same time. Therefore, this final rule retains the requirement that food stamp certification periods have definite ending dates. It is clear that State agencies, using flexibility, have been able to design procedures to achieve the Department's objective of jointly processing recertifications within the framework of their administration of the two programs and without sacrificing the integrity of the Food Stamp Program.

The Department would like to note that the matter of AFDC/food stamp coordination will be reviewed when the Department considers the question of increased consistency between the AFDC and the Food Stamp Programs as stated in the Notice of Intent to Develop Regulations, published in the **Federal Register** of February 19, 1985 (50 FR 6970).

Technical Amendments and Corrections

The Food Security Act of 1985 made some technical changes to the Food Stamp Act of 1977, as amended, which are included in this rule. Section 3(o) of the Food Stamp Act was amended to change one of the age ranges in the 4-person reference family used in calculating the amount of the Thrifty Food Plan (TFP). The ages of the adults in the reference family have been changed to 20–50 years old instead of 20–54.

When the TFP was revised in 1983, the Department had to develop a separate plan for adults age 20–54 solely to meet the requirements for the Food Stamp Act of 1977, as amended. The Department would have preferred to use a plan for adults age 20–50 because this was consistent with the age categories used by the National Academy of Sciences–National Research Council in developing the Recommended Dietary Allowances. That is what the Department used for the other three food plans that were revised in 1983. (The low cost, moderate-cost, and liberal plans all use ages 20–50 and 51 years and over as the age range for adults—consistent with the latest research on the Recommended Dietary Allowances.)

This change is not expected to have an effect on food stamp allotments. The food costs for the two groups (adults 20–50 and adults 20–54) were the same in 1983 when the TFP was revised, and since then the food costs for the two groups have been identical each month or varied by only a small amount. This is because the food consumption patterns for the 20–50 age group and for the 20–54 group are the same for seven of the eleven major food groups, and there are only minimal differences in the other four food groups.

With this change, the food stamp allotment will be based on a reference family that is more consistent with the other food plans and with the Recommended Dietary Allowances.

The second technical change amended section 5(e) of the Food Stamp Act to delete references to the homeownership component of shelter costs and to substitute references to "homeowners' cost and maintenance and repair component". These terms are used in describing the method for calculating the annual ajdustments in the standard and shelter deductions. Although the Food Stamp Act specifically stated that the homeownership component should be used, the Bureau of Labor Statistics (BLS) stopped developing a homeownership component of shelter costs for the CPI–U after the statutory language was enacted. BLS recommended that the Department use instead two comparable components: homeowners' cost and maintenance and repairs component. The Department has already used these components in making annual adjustments in deductions. This is a technical change that does not produce any change in the dollar value of food stamp deductions since the same elements are involved, but in a different combination. Now the language of the food stamp regulations can be changed to bring them into conformance with the legislation and with the Department's current procedures.

The Department is also deleting previous language concerning adjustment of the standard and shelter deductions prior to October 1, 1986. These adjustments have already been made and language referencing them is, therefore, unnecessary.

The third technical change amended section (6)(f) of the Food Stamp Act of 1977, as amended, to remove reference

to aliens which enter the United States pursuant to section 203(a)(7) of the Immigration and Nationalization Act. Aliens in this category are now granted entry pursuant to section 207 or 208 of the Immigration law. This change in the Immigration law became effective April 1, 1980. The Food Stamp Act was amended to conform with this change in the Immigration law. This action simply conforms the regulations to the appropriate Immigration law references in determining who is an eligible alien for Food Stamp Program purposes.

The Department is also taking this opportunity to correct an error in policy that appeared in a final rule published October 3, 1984 (49 FR 39035). That rule implemented work provisions which appeared in the 1981 Food Stamp and Commodity Distribution Amendments and Food Stamp Act Amendments of 1982.

Section 273.7(n)(1)(v) of that final rule stated that if a person voluntarily quit his/her job without good cause, the household's application shall be denied and sanction imposed for 90 days starting with the date of application. This was in error. The rules in effect prior to October 3 said that the sanction begins at the time of the quit. Since the Department did not intend to make a change in this area, it did not solicit comments or discuss the change in the preamble to the October 3, 1984 final rule. Program administrators were notified not to effectuate the October 3 change. This final effectuates a formal correction to return the beginning of the sanction period for applicants to the date of the quit.

A correction is also being made to 7 CFR 273.7(n)(1)(i) of current rules. That section provides that the voluntary quit provisions apply only if the quit employment involved 20 hours or more per week or provided weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours. The provision is being corrected by this final rule to include employment of 20 hours or more per week or weekly earnings of *at least* the Federal minimum wage multiplied by 20 hours.

The Department is also making some technical amendments to the rules to: (1) Correct errors in spelling, grammar, regulatory references and other typographical errors; (2) provide consistency or conformity with other regulatory provisions; and (3) reinstate provisions unintentionally removed from the Code of Federal Regulations (CFR) by previous rulemakings. The amendments do not change the principles nor the policy intent of the provisions affected. The amendments are being made to the following sections of 7 CFR:

271.2 Definitions of "Elderly or disabled member", "Retail food store" and "State";
271.5 (c);
272.1 (f), (g)(7), (g)(23)(i);
273.1 (f)(1)(B)(ii), (f)(2)(ii), (f)(4)(ii);
273.2 (c)(3), (c)(4), (e)(2), (f)(1)(ii)(B), (f)(2)(ii)(A), (f)(3)(i), (f)(5)(ii), (k)(1)(iii)(B)(*1*);
273.3 first sentence;
273.6 (f), (g);
273.7 (f), (g)(1), (h)(1)(iv), (h)(2), (n)(4)(i);
273.9 (a)(3), (b)(1)(iv), (c)(1)(ii), (c)(5);
273.10 (a)(1)(ii), (e)(2)(ii)(A)(*2*), (e)(3)(v);
273.11 (a)(2)(iii), (b)(1)(iii), (e)(6), (i)(2)(iii), (j);
273.12 (a)(1)(i), (c)(1)(i), (c)(1)(iii), (d), (e)(1)(ii);
273.15 (e);
273.16 (e)(1), (e)(6), (e)(9)(ii), (e)(10)(i), (g)(3)
273.18 (d)(4)(iii), (g)(3);
273.20 (a);
273.21 (a)(1), (b)(2), (d)(2), (h)(2)(ii), (j)(1);
273.22 (b)(6), (a)(7), (d), (f)(2)(xiii), (d), (f)(6)(iii)(A), (g)(1), (g)(4)(ii)(B)

Note.—All other requirements or provisions contained in the proposed/interim rules covered by this action which have not been specifically discussed in the preamble to this final action are adopted by this final action without change, or have been modified by this final action for the purpose of clarity and do not result in a change in policy.

Implementation

The voluntary quit correction to § 273.7(n)(1)(v) is effective retroactive to October 3, 1984. Households are entitled to lost benefits back to November 2, 1984, (the effective date of the October 3, 1984 final rule) if the State agency implemented the voluntary quit error as published on October 3, 1984. The Department is setting a 90-day implementation date for all the other provisions in this rule for a number of reasons. First, those provisions already published as interim are in place and the majority of changes in this final rule involve minimal adjustment by State agencies, especially those for optional procedures. Second, other provisions, such as those for sponsored aliens, affect only a minute portion of the caseload. Lastly, in a number of instances, this final rule does not change the current rule under which State agencies are operating.

Please note that comments on implementation of interim rules are not discussed in this preamble. They are moot because those implementation dates have passed.

List of Subjects

7 CFR Part 271

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

7 CFR Part 272

Alaska, Civil rights, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

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

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

7 CFR Part 277

Food stamps, Government procurement, Grant programs—social programs, Investigations, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, general line—wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries—retail, Groceries, general line—wholesaler,

7 CFR Part 280

Disaster assistance, Food stamps, Grant programs—social programs.

7 CFR Part 281

Administrative practice and procedure, Food stamps, Grant programs—social programs, Indians.

7 CFR Part 282

Food stamps, Government contracts, Grant programs—social programs, Research.

7 CFR Part 283

Administrative practice and procedure, Food assistance programs, Grant programs—social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 284

Administrative practice and procedure, Food assistance programs, Grant programs—social programs, Health, Nutrition.

7 CFR Part 285

Administrative practice and procedure, Food assistance programs, Grant programs—social programs, Health, Nutrition.

Accordingly, 7 CFR Parts 271 through 285 are amended as follows:

PART 271 THROUGH 285—[AMENDED]

1. The authority citations appearing after the table of contents for Part 271 and Parts 273 through 285 are revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

2. An authority citation is added to Part 272 after the table of contents to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

3. The parenthetical authority citations and/or Public Law references appearing at the end of any section under Parts 271 through 285 are removed.

PART 271—GENERAL INFORMATION AND DEFINITIONS

4. In § 271.2:

a. Paragraph (2) of the definition of "Elderly or disabled member" is amended by adding a reference to "X," between the references to titles "II" and "XIV". This reference was inadvertently removed from the CFR by a previous amendment and is hereby reinstated. In addition, paragraph (3) of the definition is revised, paragraphs (4) and (5) are redesignated as paragraphs (5) and (6), respectively and revised, and a new paragraph (4) is added.

b. In the definition of "Retail food store", paragraph (3) is amended by replacing the word "food" appearing at the end of the paragraph with the word "foods".

c. The definition of "State" is amended by removing the words "of 1977".

d. The definition of "Thrifty food plan" is amended by replacing the reference of "54" with a reference of "50".

The revisions and addition read as follows:

§ 271.2 Definitions.

* * * * *

"Elderly or disabled member" * * * (3) is a veteran with a service-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code; (4) is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code; (5) is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code; or (6) is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death under title 38 of the United States Code *and* has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them.

* * * * *

§ 271.5 [Amended]

5. In § 271.5, paragraph (c) is amended by adding a comma after the phrase "to avoid any unauthorized use".

§ 271.6 [Amended]

6. In § 271.6, paragraph (b)(1)(i) is amended by changing the mailing address to read "CN 02150, Trenton, N.J. 08650", paragraph (b)(1)(iii) is amended by changing the mailing address to read "50 East Washington Street, Chicago, Ill. 60602", and paragraph (b)(1)(vi) is amended by replacing the reference to "New England" with a reference to "Northeast".

§ 271.7 [Amendment final]

7. The amendment to § 271.7 to amend paragraph (e)(2)(ii), as published at 47 FR 53830, November 30, 1982, is adopted as final without change.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

8. In § 271.1:

a. Paragraph (f) is amended by replacing the word "closures" in the fourth sentence with the word "closure" and by replacing the comma in the phrase "claims, documentation" appearing in the fifth sentence with the word "and".

b. The title of paragraph (g)(7) is amended by adding the number "*151*" after the word "*Amendment*" appearing in the title heading.

c. A new paragraph (73) is added to paragraph (g) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(73) *Amendment No. 269.* The correction to § 273.7(n)(1)(v) outlined in amendment 269 effective retroactively to October 3, 1984. State agencies which may have implemented the voluntary quit error prior to receiving FNS notification not to effectuate the change, shall issue lost benefits to affected households, but not prior to November 2, 1984 (the effective date of the October 3, 1984 final rule). State agencies shall implement the revisions to the rules outlined in amendment 269 for all new applicants no later than the first day of the month following June 26, 1986. Any conversion of the current caseload necessitated by this amendment shall be done at recertification or at the time the case is next reviewed, whichever occurs first.

9. In § 272.7, a new sentence is added to the end of paragraph (i) to read as follows:

§ 272.7 Procedures for program administration in Alaska.

* * * * *

(i) *Resources.* * * * Vehicles necessary for subsistence hunting and fishing shall not be counted as a household resource.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

10. In § 273.1:

a. Paragraphs (a) and (b) are revised in their entirety.

b. The first sentence of paragraph (c)(1) is amended by adding the phrase "(excluding residents of a commercial boarding house)" after the word "meals".

c. The last sentence of paragraph (c)(1) is revised.

d. The last sentence of paragraph (f)(1)(ii) is amended be replacing the reference to "§ 274.2(e) with a reference to "§ 274.2(e) and (f)" and removing the words "with a particular ATP."

e. The last sentence of paragraph (f)(2)(ii) is amended by replacing the reference to "§ 273.2(f)(6)" with a reference to "§ 273.11(f)(6)".

(f) The first sentence of paragraph (f)(4)(ii) is amended by replacing the word "fraud" with the words "an intentional Program violation".

The revisions read as follows:

§ 273.1 Household concept.

(a) *Household definition.*—(1) *General definition.* A household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in paragraph (e) of this section), are not residents of a commercial boarding house, or are not boarders (except as otherwise specified in paragraph (c) of this section):

(i) An individual living alone;

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others;

(iii) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(2) *Special definition:* (i) The following individuals living with others or groups of individuals living together *shall be* considered as customarily purchasing food and preparing meals together, even if they do not do so:

(A) A spouse as defined in § 271.2 of a member of the household;

(B) Children under 18 years of age under the parental control of an adult household member;

(C) Parent(s) living with their natural, adopted or stepchild(ren) and such child(ren) living with such parent(s), unless at least one parent is elderly or disabled as defined in § 271.2. If at least one parent is elderly or disabled, separate household status may be granted to the otherwise eligible parent(s) or child(ren) based on the provisions of paragraphs (a)(1) and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section.

(D) Siblings (natural, adopted, half or stepbrothers and sisters) living together, unless at least one sibiling is elderly or disabled as defined in § 271.2. If at least one sibling is elderly or disabled, separate household status may be granted to the otherwise eligible elderly or disabled sibling based on the provisions of paragraph (a)(1) of this section and subject to the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this section.

(ii) Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of paragraph (a)(1)(iii) of this section, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a nondisease-related, severe, permanent disability may be a separate household from the others based on the provisions of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) and (a)(2)(i)(B) of this section provided that the income (all income under § 273.9(b)) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line.

(b) *Nonhousehold members.* (1) For the purposes of defining a household under the provisions of paragraph (a)(1) of this section, the following individuals shall not be included as a member of the household, unless specifically included as a household member under the provisions of paragraph (a)(2) of this section. If not included as a member of the household under the provisions of paragraph (a)(2) of this section, such individuals shall not be included as a member of the household for the purpose of determining household size, eligibility, or benefit level. The income and resources of such individuals shall be handled in accordance with the provisions of § 273.11(d). The following individuals (if otherwise eligible) may participate as separate households:

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *Live-in-attendants.* Individuals who reside with a household to provide medical, housekeeping, child care or similar personal services.

(iii) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(2) Some household members are ineligible to receive Program benefits under the provisions of the Food Stamp Act (such as SSI recipients in cash-out States, certain aliens, and certain students). Others may become ineligible for such reasons as being disqualified for committing an intentional Program violation or refusing to comply with a regulatory requirement. These individuals shall be included as a member of the household for the purpose of defining a household under the provisions of paragraphs (a)(1) and (a)(2) of this section. However, such individuals *shall not* be included as eligible members of the household when determining the households, size for the purpose of comparing the household's monthly income with the income eligibility standard or assigning a benefit level by household size. The income and resources of such individuals shall be handled in accordance with the provisions of § 273.11 (c) or (d), as appropriate. These individuals are not eligible to participate as separate households. Ineligible individuals include the following:

(i) *Ineligible students.* Individuals who do not meet the eligible student requirements of § 273.5.

(ii) *Ineligible aliens.* Individuals who do not meet the citizenship or eligible alien status requirements of § 273.4(a) or the eligible sponsored alien requirements of § 273.11(h).

(iii) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health and Human Services to have specifically included the value of the coupon allotments in its State supplemental payments.

(iv) *Intentional Program violation.* Individuals disqualified for intentional Program violation, as set forth in § 273.16.

(v) *SSN disqualified.* Individuals disqualified for failure to provide an SSN, as set forth in § 273.6.

(vi) *Workfare sanctioned.* Individuals against whom a sanction was imposed while they were participating in a household disqualified for failure to comply with workfare requirements set forth in § 273.22.

(c) *Boarders.* (1) * * * In no event shall boarder status be granted to those individuals or groups of individuals described in paragraph (a)(2) of this section which includes children or siblings residing with elderly or disabled children or siblings.

* * * * *

In § 273.2:

a. The first sentence of paragraph (c)(3) is amended by removing the words "and those groups and organizations involved in outreach efforts".

b. The second sentence of paragraph (c)(4) is amended by removing the words "in outreach materials and".

c. The fourth sentence of paragraph (e)(2) introductory text is amended by adding the word "an" between the words "preclude" and "in-office".

d. Paragraph (f)(1)(ii)(A) is amended by replacing the reference of "§ 273.4(a)(2) through (8)" with a reference to "§ 273.4(a)(2) through (a)(7)".

e. Paragraph (f)(1)(ii)(B) is amended by replacing the word "residents" with the "resident" appearing in the first sentence.

f. Paragraph (f)(1)(ii)(C) is amended by replacing the reference to "§ 273.4(a)(4) through (a)(8)" with a reference to "§ 273.4(a)(4) through (a)(7)", by

removing all references to "203(a)(7)" and by removing the third sentence which begins with the word "However".

g. Paragraph (f)(1)(ii)(E) is amended by removing the reference to "203(a)(7)" appearing in the second sentence.

h. A new paragraph (viii) is added to paragraph (f)(1).

i. Paragraph (f)(2)(i) is revised.

j. The third sentence of paragraph (f)(2)(ii)(A) is amended by replacing the word "household" with the word "program".

k. The second sentence of paragraph (f)(3)(i) is amended by replacing the phrase "State-wide and project areawide" with the phrase "Statewide or throughout a project area".

l. The fifth sentence of paragraph (f)(5)(ii) is amended by removing the comma appearing in the phrase "another collateral contact, or to provide".

m. The amendment to "§ 273.2 to revise paragraph (i)(1), as published at 47 FR 53828, November 30, 1982, is adopted as final without change.

n. Paragraph (i)(3)(i) is revised in its entirety.

o. The amendment to "§ 273.2 to revise paragraph (i)(3)(iii), as published at 47 FR 53830, November 30, 1982, is adopted as final without change.

p. The amendment to "§ 2732 (i)(4)(i), as published at 47 FR 53830, November 30, 1982, is adopted as final without change.

q. In paragraph (i)(4)(iii)(B), the sixth sentence is revised, two new sentences are added to paragraph (B) after the sixth sentence, and a new paragraph (C) is added.

r. Paragraph (j)(1)(i) is revised.

s. The amendment to § 273.2 to remove paragraph (j)(1)(ii) and redesignate paragraphs (j)(1)(iii) through (j)(1)(v) as paragraphs (j)(1)(ii) through (j)(1)(iv) respectively, and to revise the newly designated paragraph (j)(1)(iv), as published at 48 FR 13957, April 1, 1983, is adopted as final except newly designated paragraph (j)(1)(iv) from this earlier amendment is amended by adding two new sentences at the end of the paragraph.

t. Paragraph (k)(1)(iii)(B)(*1*) is amended by replacing the reference to "§ 273.10(f)(3)(iv)" with a reference to "§ 273.10(f)(3)(iii)."

The additions and revisions read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(viii) *Disability.* (A) The State agency shall verify disability as defined in § 271.2 as follows:

(*1*) For individuals to be considered disabled under paragraph (2) of the definition, the household shall provide proof that the disabled individual is receiving benefits under titles. I, II, X, XIV or XVI of the Social Security Act.

(*2*) For individuals to be considered disabled under paragraph (3) of the definition, the household must present a statement from the Veterans Administration (VA) which clearly indicates that the disabled individual is receiving VA disability benefits for a service-connected disability and that the disability is rated as total or paid at the total rate by VA.

(*3*) For individuals to be considered disabled under paragraphs (4) and (5) of the definition, proof by the household that the disabled individual is receiving VA disability benefits is sufficient verification of disability.

(*4*) For individuals to be considered disabled under paragraph (6) of the definition, the State agency shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under paragraph (6) of the definition.

(B) For disability determinations which must be made relevant to the provisions of § 273.1(a)(2)(ii), the State agency shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious to the caseworker that the individual is unable to purchase and prepare meals because he/she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious to the caseworker, he/she shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician's/psychologist's opinion) is unable to purchase and prepare meals because he/she suffers from one of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he/she suffers from some other severe, permanent physical or mental disease or nondisease-related disability. The elderly and disabled individual (or his/her authorized representative) shall be responsible for obtaining the cooperation of the individuals with whom he/she resides in providing the necessary income information about the others to the State agency for purposes of this provision.

(2) *Verification of questionable information.* * * *

(i) *Household composition.* State agencies shall verify factors affecting the composition of a household, if questionable. Individuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness shall be responsible for proving a claim of separateness (at the State agency's request) in accordance with the provisions of § 273.2(f)(1)(viii).

* * * * *

(i) *Expedited service.* * * *

(3) *Processing standards.* * * *

(i) *General.* For households entitled to expedited service, except as specified in paragraphs (3)(ii) through (3)(iii) of this section, the State agency shall mail coupons or the household's ATP by the close of business on the fourth calendar day following the day the application was filed or have the ATP or coupons available for pickup no later than the close of business on the fifth calendar day following the day the application was filed. For intervening weekends or holidays, the State agency shall use the following procedures: (A) If the fifth calendar day is a Saturday, have the ATP or coupons available for pickup or mail the ATP or coupons on the previous Friday; (B) If the fifth calendar day is a Sunday, have the ATP or coupons available for pickup on the following Monday or mail the ATP or coupons in the earliest outgoing mail on Monday morning; (C) If the fifth calendar day is a holiday which falls on a Monday, have the ATP or coupons available for pickup on the following Tuesday or mail the ATP or coupons in the earliest outgoing mail on Tuesday morning; (D) If the fourth or fifth calendar day is a holiday which falls on a Friday, have the ATP or coupons available for pickup or mail the

ATP or coupons on the previous Thursday.

* * * * *

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

(iii) * * *

(B) * * * When households which applied for benefits after the 15th of the month provide the required postponed verification, the State agency shall issue the second month's benefits within five working days from receipt of the verification or the first day of the second calendar month, whichever is later. If a State has staggered issuance, this would be the first working day of the second calendar month, not the day benefits are issued in a State using staggered issuance. This actual first working day of the calendar month issuance provision shall also apply to issuance in the third month for those migrant households needing out-of-State verification. * * *

(C) Households which applied for benefits after the 15th of the month who have not postponed verification shall be assured of receiving at least one full month's benefits before being placed in a staggered issuance cycle. If certified for more than one month, all households eligible for expedited service, who apply after the 15th of the month, shall be issued their first month's benefits within the expedited service timeframes. They shall be issued their second month's benefits on the actual first working day of the second calendar month, not the day benefits are issued in a State using staggered issuance.

* * * * *

(j) *PA and GA households.* * * *

(l) *PA households.*

(i) State agencies, at their discretion, may permit households applying for PA and food stamps at the same time to complete a joint application for both programs, or separate applications for both programs or an application for PA with an addendum to collect information relevant only to the Food Stamp Program. If the State agency elects to use a joint PA/food stamp application, the application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section. The joint PA/food stamp application may be used for all food stamp applicants provided the application form is approved for all households by FNS.

* * * * *

(iv) * * * State agencies shall notify households of the need for a new application. If a required new application is filed within 30 days of the original application, the filing date of the new application shall be the original filing date of the joint application.

* * * * *

§ 273.3 [Amended]

12. The first sentence of § 273.3 is amended by removing the comma after the word "arrangements".

13. In § 273.4:

a. Paragraph (a)(4) is revised, paragraph (a)(5) is removed, paragraphs (a)(6) through (a)(8) are redesignated as paragraphs (a)(5) through (a)(7), respectively, and newly designated paragraph (a)(7) is amended by removing the phrase "because of the judgement of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion".

b. Paragraphs (b) and (c) are revised.

c. The second sentence of paragraph (d) is amended by replacing the phrase "treated in the same manner as a disqualified member as set forth in" with the phrase "handled as outlined in".

The revisions read as follows:

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* * * *

(4) An alien who is qualified for entry pursuant to section 207 or 208 of the Immigration and Nationalization Act.

* * * * *

(b) *Ineligible aliens.* Aliens other than those described in paragraph (a) of this section shall not be eligible to participate. This includes, but is not limited to, alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien shall be handled as outlined in § 273.11(c)(2).

* * * * *

14. In § 273.5:

a. The amendment to § 273.5 to revise paragraphs (b)(1)(iii) and (b)(1)(iv) and to add a new paragraph (b)(1)(v), as published at 47 FR 55908, December 14, 1982, is adopted as final without change.

b. The amendment to § 273.5 to remove paragraphs (b)(3) and (b)(4) and to redesignate paragraph (b)(5) as (b)(3), as published at 47 FR 55908, December 14, 1982, is adopted as final except the newly redesignated (b)(3) from this earlier amendment is revised to read as follows:

§ 273.5 Students.

* * * * *

(b) *Eligibility requirements.* * * *

(3) The income and resources of an ineligible student shall be handled as outlined in § 273.11(d).

§ 273.7 [Amended]

15. In § 273.7:

a. Paragraph (b)(1)(vii) is amended by adding the phrase "as determined by averaging over the certification period" between the words "weekly" and "shall" in the last sentence. This phrase was inadvertently removed from the CFR by a previous amendment and is hereby reinstated.

b. The introductory text of paragraph (f) is amended by removing the comma after the word "applicants" in the second sentence, and by removing the parenthesis after the word "application" and adding a parenthesis after the word "interviews" in the third sentence, removing the word "a" after the phrase "actively engaging in" appearing in the fourth sentence, and removing the word "the" after the phrase "Failure to comply with" appearing in the fifth sentence.

c. Paragraph (h)(1)(iv) is amended by replacing the word "unsuitable" with the word "suitable" and by replacing all language appearing between the phrase "refused job," and the phrase "with weekly earnings equal to" with the words "or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but". Portions of this language were inadvertently removed from the CFR by a previous amendment and are hereby reinstated the way the provision was intended to be read.

d. The last sentence of paragraph (h)(2) is amended by replacing the word "noncomplaint" with the word "noncompliant".

e. The third sentence of paragraph (n)(1)(i) is amended by adding the words "at least" between the words "earnings" and "equivalent".

f. The second sentence of paragraph (n)(1)(v) is amended by replacing the word "application" (appearing as the last word in that sentence) with the word "quit".

g. The third sentence of paragraph (n)(4)(i) is amended by adding a comma after the word "manner".

16. In § 273.8:

a. The amendment to § 273.8 to add a new sentence to the end of paragraph (a) and revise paragraph (c)(1), as published at 47 FR 55909, December 14, 1982, is adopted as final without change.

b. The amendment to § 273.8 to add a new paragraph (c)(3), as published at 47

FR 55467, December 10, 1982, is adopted as final without change.

c. Paragraph (e)(4) is amended by adding a new sentence at the end of the paragraph.

d. Paragraph (e)(5) is amended by removing the words "and rental homes", placing a period after the words "household member" and removing the remaining text of the paragraph.

e. The second sentence of the introductory text of paragraph (e)(11) is revised and a new paragraph (x) is added to paragraph (e)(11).

f. Paragraph (h)(1)(iv) is removed and paragraphs (h)(1)(v) and (vi) are redesignated as (h)(1)(iv) and (v), respectively.

g. Newly redesignated paragraph (h)(1)(v) is amended by replacing the word "for" appearing in the second parenthetical phrase, with the word "per".

h. Paragraph (h)(2) is amended by replacing the reference to "(v)" with a reference to "(iv)".

i. Paragraph (j) is revised in its entirety.

The additions and revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

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

(4) * * * Such property shall include rental homes and vacation homes.

* * * * *

(11) * * * The following is a listing of some of the resources excluded by Federal statute:

* * * * *

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

* * * * *

(j) *Resources of nonhousehold members.* (1) The resources of nonhousehold members, as defined in § 273.1(b)(1), shall be handled as outlined in § 273.11(d).

(2) The resources of nonhousehold members, as defined in § 273.1(b)(2), shall be handled as outlined in § 273.11(c) and (d), as appropriate.

17. In § 273.9:

a. The amendment to § 273.9 to revise the introductory text of paragraph (a), to revise paragraphs (a)(1) and (a)(2), to amend the introductory text of paragraph (a)(3) and to amend paragraphs (a)(3)(i) and (a)(3)(ii), as published at 47 FR 55909, December 14, 1982, is adopted as final except the introductory text of paragraph (a)(3) from this earlier amendment is amended by replacing the phrase "Federal income poverty annual adjustment to the nonfarm" with the phrase "annual adjustment to the Federal income".

b. Paragraph (b)(1)(i) is amended by removing the second and third sentences.

c. Paragraph (b)(1)(iv) is amended by replacing the reference to "§ 273.10(e)(1)(B)" with a reference to "§ 273.10(e)(1)(i)(B)".

d. Paragraph (b)(2)(i) is amended by placing a period after the words "other assistance programs based on need", removing the remaining text of the paragraph and adding a new sentence to the end of (b)(2)(i).

e. The amendment to § 273.9 to add a new paragraph (b)(4), as published at 47 FR 55467, December 10, 1982, is adopted as final without change.

f. Paragraph (c)(1)(ii) is amended by adding the word "be" between the words "shall" and "considered" appearing after the reference to "South Bend, Ind.".

g. The third sentence of the introductory text to paragraph (c)(5) is amended by replacing the word "of" appearing in the phrase "of food eaten at home" with the word "or".

h. Paragraph (c)(10) is amended by adding a new paragraph (c)(10)(x).

i. Paragraphs (d)(7) (i) and (ii) are removed, paragraphs (d)(7) (iii) and (iv) are redesignated as paragraphs (d)(7) (i) and (ii), respectively and newly designated paragraph (d)(7)(i) is revised.

j. Paragraphs (d)(8) (i) and (ii) are removed, paragraphs (d)(8) (iii) and (iv) are redesignated as paragraphs (d)(8) (i) and (ii), respectively and newly designated paragraph (d)(8)(i) is revised.

The revisions and additions read as follows:

§ 273.9 Income and deductions.

* * * * *

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

(2) * * *

(i) * * * Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

* * * * *

(c) *Income exclusions.* * * *

(10) * * *

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

* * * * *

(d) *Income deductions.* * * *

(7) *Adjustment of standard deduction.* (i) Effective October 1, 1986, and each October 1 thereafter, the standard deductions shall be adjusted to reflect changes in the CPI–U for items other than food and the homeowners and maintenance and repair component of shelter costs for the twelve months ending the previous June 30.

* * * * *

(8) *Adjustment of shelter deduction.* (i) Effective October 1, 1986, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter, (exclusive of homeowners' cost and maintenance and repair component), fuel, and utilities components of the CPI–U for the twelve months ending the proceeding June 30.

* * * * *

18. In § 273.10:

a. The amendment to § 273.10 to remove the third sentence of paragraph (a)(1)(ii) and replace it with two new sentences, as published at 47 FR 55909–55910, December 14, 1982, is adopted as final except the first sentence added by this earlier amendment (appearing as the third sentence in paragraph (a)(1)(ii) is amended by replacing the word "subsection" with the word "section" and the second sentence added by this earlier amendment (appearing as the fourth sentence of paragraph (a)(1)(ii)) is misleading and is being removed for clarity.

b. The amendment to § 273.10 to amend the introductory text of paragraph (a)(1)(iii) and revise paragraph (a)(1)(iii)(C), as published at 47 FR 55909, December 14, 1982, is adopted as final without change.

c. Paragraph (a)(2) is revised in its entirety.

d. Paragraph (e)(2)(i)(A) is amended by replacing the phrase "All households," with the phrase "Households which contain an elderly or disabled member as defined in § 271.2,".

e. The amendment to § 273.10 to revise or amend paragraphs (e)(2)(i)(C), (e)(2)(ii)(B) and (e)(2)(ii)(C), the introductory text of paragraph (e)(2)(iii), and paragraphs (e)(2)(iv), (e)(2)(vi)(A) and (e)(2)(vi)(B), as published at 47 FR 55909–55910, December 14, 1982, is adopted as final without change.

f. Paragraph (e)(2)(ii)(A)(*2*) is amended by adding the word "to" before the phrase "the nearest lower dollar".

g. The amendment to § 273.10(e) to revise the introductory tests of paragraphs (e)(3), (e)(3)(i) and (e)(3)(ii), to remove paragraph (e)(3)(vi) and redesignate paragraphs (e)(3)(vii) and (e)(3)(viii) as paragraphs (e)(3)(vi) and (e)(3)(vii), respectively, and to remove the second sentence in the newly redesignated paragraph (e)(3)(vi), as published at 47 FR 53831, November 30, 1982, is adopted as final without change.

h. The fifth sentence of paragraph (e)(3)(v) is amended, by removing the comma appearing before the reference to "on May 1".

i. The amendment to § 273.10 to revise paragraph (f)(2), as published at 48 FR 13957, April 1, 1983, is adopted as final without change.

j. The amendment to § 273.10 to amend paragraph (f)(3), as published at 48 FR 13957, April 1, 1983, is adopted as final without change.

k. The amendment to § 273.10 to remove paragraph (g)(1)(i)(B) and redesignate paragraphs (g)(1)(i)(C) and (g)(1)(i)(D) as (g)(1)(i)(B) and (g)(1)(i)(C), respectively, as published at 48 FR 13957, April 1, 1983, is adopted as final without change.

The revisions read as follows:

§ 273.10 Determining household eligibility and benefit level.

(a) *Month of application.* * * *

(2) *Application for recertification.*

(i) Eligibility for recertifications shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2). If an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with paragraph (a)(1)(ii) of this section. In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(ii) Any household which receives the notice of expiration at the time of certification as discussed in § 273.14(c)(i) shall not be subject to proration for the first month of their new certification period if the deadline for filing an application for recertification falls after the end of their current certification period. However, such households found ineligible for the first month following the end of the certification shall have the first month of any subsequent participation considered an initial month.

(iii) For all households for which the State agency elects the timeframe for providing missing verification outlined in § 273.14(c)(3) and the end of that timeframe falls after the end of the household's current certification period, the household shall *not* be subject to proration for the first month following the end of its current certification period, if it has provided the missing verification and is otherwise eligible.

* * * * *

19. In § 273.11:

a. Paragraph (a)(2)(iii) is amended by replacing the words "the 18-percent" with the words "an 18-percent" and by replacing the phrase "as for any other household" with the phrase "in accordance with § 273.9(d)".

b. The first sentence of the introductory text of paragraph (b)(1) is amended by replacing the reference to "§ 273.1(b)" with a reference to"§ 273.1(c)".

c. Paragraph (b)(1)(iii) is amended by replacing the words "the 18-percent" with the words "an 18-percent".

d. The title and text of introductory paragraph (c) are revised.

e. Introductory paragraph (c)(1) is amended by replacing the words "Excluded for intentional" in the title heading with the word "Intentional" and replacing the word "excluded" appearing in the text with the words "determined ineligible".

f. Paragraphs (c)(1)(i) and (c)(1)(ii) are amended by replacing the word "excluded" wherever it appears, with the word "ineligible".

g. The title of introductory paragraph (c)(2) is revised.

h. The text of introductory paragraph (c)(2) is amended by replacing the word "excluded" with the words "determined ineligible".

i. Paragraphs (c)(2) (i), (ii), (iii) and (iv) are amended by replacing the word "excluded" with the word "ineligible", wherever it appears.

j. The text of introductory paragraph (c)(3) is amended by replacing the word "excluded" with the words "determined ineligible".

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

l. The first sentence of paragraph (d)(1) is revised.

m. A new paragraph (d)(3) is added.

n. The first sentence of paragraph (e)(6) is amended by replacing the word "fraud" with words "intentional Program violation".

o. The amendment to § 273.11 to redesignate paragraph (h) as (i), as published at 47 FR 55464, December 10, 1982, is adopted as final without change.

p. The amendment to § 273.11 to add a new paragraph (h), as published at 47 FR 55464, December 10, 1982, is adopted as final with some changes. The provisions of the new paragraph (h) from this earlier amendment which are changed or adopted as final without change are as follows:

1. Paragraph (h)(1) and introductory paragraph (h)(2) are adopted without change.

2. Paragraph (h)(2)(i) is revised.

3. Paragraph (h)(2)(ii) is redesignated as (h)(2)(iii) and revised and new (h)(2)(ii) is added.

4. Paragraph (h)(2)(iii) is adopted as final, redesignated as (h)(2)(iv) and amended by removing the last sentence.

5. Paragraph (h)(2)(iv) is adopted as final except the reference to (h)(2)(iii) is changed to (h)(2)(iv) and the paragraph redesignated as (h)(2)(v).

6. Paragraph (h)(2)(v) is adopted as final except the reference to (h)(2)(iii) is changed to (h)(2)(iv) and the paragraph redesignated as (h)(2)(vi).

7. Paragraph (h)(2)(vi) is redesignated as (h)(2)(vii) and revised.

8. Paragraph introductory paragraph (h)(3) is adopted without change.

9. Paragraph (h)(3)(i) is revised.

10. Paragraphs (h)(3)(ii) and (h)(3)(iii) are adopted without change.

11. Paragraph (h)(4) is revised.

12. The paragraph heading for (h)(5) is revised.

13. Introductory paragraph (h)(5)(i) is revised.

14. Paragraph (h)(5)(i)(A) is adopted as final but amended by removing the phrase "at the time of the alien's application for food stamp assistance".

15. Paragraph (h)(5)(i)(B) is revised.

16. Paragraphs (h)(5)(i)(C), (h)(5)(i)(D) and (h)(5)(i)(E) are adopted without change.

17. Paragraph (h)(5)(i)(F) is revised.

18. Paragraph (h)(5)(i)(G) is adopted without change.

19. Paragraph (h)(5)(ii) is revised.

20. Paragraph (h)(6) is revised.

21. Paragraph (h)(7) is adopted without change.

22. Paragraphs (h)(8)(i) and (h)(8)(ii) are adopted without change.

23. Paragraph (h)(8)(iii)(A) is adopted as final and a new sentence is added to the end of paragraph.

24. Paragraphs (h)(8)(iii)(B) and (h)(8)(iii)(C) are adopted without change.

25. Paragraph (h)(8)(iv) is revised.

q. In paragraph (i)(2)(iii), the first sentence is amended by replacing the word "fraudulent" with the phrase "an act of intentional Program violation",

the fourth sentence is amended by replacing the words "a fraud hearing" with the words "an administrative disqualification hearing" and replacing the reference to § 273.16(d)(1)" with a reference to "§ 273.16(e)(1)", the fifth sentence is amended by replacing the word "fraud" with the words "an act of intentional Program violation", and the sixth sentence is amended by replacing the word "Fraud" with the words "An act of intentional Program violation".

r. The first sentence of introductory paragraph (j) is amended by replacing the word "a" appearing before the word "comply" with the word "to."

The revisions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of certain nonhousehold members.* During the period of time that a household member cannot participate because he/she is an ineligible alien, is ineligible because of disqualification for an intentional Program violation, is ineligible because of disqualification for failure or refusal to obtain or provide an SSN, or is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

* * * * *

(2) *SSN disqualification or ineligible alien.* * * *

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

(ii) *SSN disqualification, ineligible alien, workfare disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is an ineligible alien, is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, or is ineligible because he/she was disqualified for refusal to obtain or provide an SSN, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

(d) *Treatment of income and resources of other nonhousehold members.* (1) For all other nonhousehold members defined in § 273.1 (b)(1) and (b)(2) who are not specifically mentioned in paragraph (c) of this section, the income and resources of such individuals shall not be considered available to the household with whom the individual resides. * * *

* * * * *

(3) Such nonhousehold members shall not be included when determining the size of the household for the purposes of:

(i) Assigning a benefit level to the household;

(ii) Comparing the household's monthly income with the income eligibility standards; or

(iii) Comparing the household's resources with the resource eligibility limits.

* * * * *

(h) *Households containing sponsored alien members.* * * *

(2) *Deeming of sponsor's income and resources as that of the sponsored alien.* * * *

(i) The monthly income of the sponsor and sponsor's spouse (if living with the sponsor) deemed to be that of the alien shall be the total monthly earned and unearned income as defined in § 273.9(b) (including the income exclusions provided for in § 273.9(c)) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member applies or is recertified for Program participation, reduced by: (A) An 18 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse; and (B) an amount equal to the Food Stamp Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(ii) If the alien has already reported gross income information on his/her sponsor due to AFDC's sponsored alien rules, that income amount may be used for Food Stamp Program deeming purposes. However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien shall be limited to the 18 percent earned income amount and the Food Stamp Program's gross monthly income amount provided for in paragraphs (h)(2)(i)(B) and (h)(2)(i)(C) of this section.

(iii) Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount attributed to the alien under paragraph (h)(2)(i) of this section. Only the portion of the amount paid that actually exceeds the amount deemed would be considered income to the alien in addition to the deemed income amount.

* * * * *

(vii) If the alien reports that he/she has changed sponsors during the certification period, then deemed income and resources shall be recalculated based on the required information about the new sponsor and sponsor's spouse as outlined in paragraphs (h)(2)(i) through (h)(2)(iv) of this section and the reported change would be handled in accordance with the timeframes and procedures outlined in § 273.12 or § 273.21, as appropriate. In the event that an alien loses his/her sponsor during the three-year limit on the sponsored alien provisions of this section and does not obtain another, the deemed income and resources of the previous sponsor shall continue to be attributed to the alien until such time as the alien obtains another sponsor or until the three-year period for applying the sponsored alien provisions expires, whichever occurs first. However, should the alien's sponsor become deceased, the deemed income and resources of sponsor shall no longer be attributed to the alien.

(3) *Exempt aliens.* * * *

(i) An alien who is participating in the Food Stamp Program as a member of his/her sponsor's household or an alien whose sponsor is participating in the Food Stamp Program separate and apart from the alien;

* * * * *

(4) *Sponsored alien's responsibility.* For a period of three years from the alien's date of entry or date of admission as a lawful permanent resident, the alien shall be responsible for obtaining the cooperation of his/her sponsor, for providing the State agency at the time of application and at the time of recertification with the information and/or documentation necessary to calculate deemed income and resources in accordance with paragraphs (h)(2)(i) through (h)(2)(iv) of this section, and for providing the names (or other identifying factors) of other aliens for whom the alien's sponsor has signed an agreement to support to enable the State agency to determine how many of such other aliens are Food Stamp Program applicants or participants and initiate the proration provisions in paragraph (h)(2)(vi) of this section. If such information about other aliens for whom

the sponsor is responsible is not provided to the State agency, the deemed income and resource amounts calculated shall be attributed to the applicant alien in their entirety until such time as the information is provided. The alien shall also be responsible for reporting the required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or become deceased during the certification period. Such changes shall be handled in accordance with the timeliness standards and procedures described in §§ 273.12 and 273.21, as appropriate.

(5) *State agency responsibilities.* (i) The State agency shall obtain the following information from the alien at the time of the household's initial application and at the time the household applies for recertification:

* * * * *

(B) The names or other identifying factors (such as an alien registration number) of other aliens for whom the sponsor has signed an affidavit of support or similar agreement to enable the State agency to fulfill the requirements of paragraph (h)(2)(vi) of this section.

* * * * *

(F) The number of dependents who are claimed or could be claimed as dependents by the sponsor or the sponsor's spouse for Federal income tax purposes.

* * * * *

(ii) The State agency shall verify income information obtained in accordance with paragraphs (h)(4) and (h)(5)(i) of this section. The State agency shall verify all other information obtained in accordance with paragraphs (h)(4) and (h)(5)(i) of this section if questionable and which affects household eligibility and benefit levels in accordance with the procedures established in § 273.2(f). State agencies shall assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Awaiting verification.* While the State agency is awaiting receipt and/or verification from the alien of information necessary to carry out the provisions of paragraph (h)(2) of this section, the sponsored alien shall be ineligible until such time as all necessary facts are obtained. The eligibility of any remaining household members shall be determined. The income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) shall be considered available in determining the eligibility and benefit level of the remaining household members in accordance with paragraph (c) of this section. If the sponsored alien refuses to cooperate in providing and/or verifying needed information, other adult members of the alien's household shall be responsible for providing and/or verifying information required in accordance with the provisions of § 273.2(d). If the information and/or verification is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as needed sponsor information is provided and/or verified. State agencies shall assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

* * * * *

(8) *Overissuance due to incorrect sponsor information.* * * *

(iii) * * *

(A) * * * The sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault where it was determined that incorrect information has been provided or to contest the amount of the claim.

(iv) *Collecting claims against alien households.* Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information concerning the alien's sponsor or sponsor's spouse, the State agency shall determine whether such incorrect information was supplied due to inadvertent household error or an act of intentional Program violation on the part of the alien. If sufficient documentary evidence exists to substantiate that the incorrect information was provided in an act of intentional Program violation on the part of the alien, the State agency shall pursue the case in accordance with § 273.16 for intentional Program violation disqualifications. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional Program violation by an administrative disqualification hearing official or a court of appropriate jurisdiction. If the State agency determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with § 273.18. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

* * * * *

20. In § 273.12:

a. The last sentence of paragraph (a)(1)(i) is amended by removing the word "these".

b. The first sentence of paragraph (c)(1)(i) is amended by replacing the word "not" appearing in the phrase "effective not later than" with the word "no".

c. Paragraph (c)(1)(iii) is amended by replacing all references within the paragraph to "§ 273.2(f)(9)(ii)" with a reference to "§ 273.2(f)(8)(ii)".

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

e. The last sentence of paragraph (d) is amended by removing the word "fraud".

f. The introductory text of paragraph (e) is revised.

g. A new paragraph (e)(1)(ii) is added. This paragraph was inadvertently removed from the CFR by a previous amendment and is hereby reinstated and revised.

h. Paragraph (e)(2) is revised in its entirety.

i. Paragraph (e)(3) is revised in its entirety.

j. Paragraph (e)(4) is revised in its entirety.

k. New paragraphs (e)(5) and (e)(6) are added.

The revisions and additions read as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.* * * *

(2) *Decreases in benefits.* If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported unless one of the exemptions to the notice of adverse action in § 273.13 (a)(3) or (b) applies. When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. When a notice of adverse action is not used due to one of the exemptions in § 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required

by § 273.2(f) must be obtained prior to recertification.

* * * * *

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include, but are not limited to, adjustments to the income eligibility standards, the shelter and dependent care deductions, the Thrifty Food Plan and the standard deduction; annual and seasonal adjustments to State utility standards; periodic cost-of-living adjustments to Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Aid to Families with Dependent Children AFDC) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* * * *

(ii) A notice of adverse action shall not be used for these changes. At a minimum, the State agencies shall publicize these mass changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or general notices mailed to households. At its option, the State agency may send the notice described in paragraph (e)(4) of this section or some other type of written explanation of the change. A household whose certification period overlaps a seasonal variation in the State utility standard shall be advised at the time of initial certification of when the adjustment will occur and what the variation in the benefit level will be, if known.

(2) *Mass changes in public assistance and general assistance.* (i) When the State agency makes an overall adjustment to public assistance (PA) payments, corresponding adjustments in households' food stamp benefits shall be handled as a mass change in accordance with the procedures in paragraphs (e)(4), (5) and (6) of this section. When the State agency has at least 30 days advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the food stamp change shall be effective no later than the month following the month in which the PA change was made.

(ii) State agencies which also administer a general assistance (GA) program shall handle mass adjustments to GA payments in accordance with the schedules outlined in paragraph (e)(2)(i) and the procedures in paragraphs (e) (4), (5) and (6) of this section. However, where State agencies do not administer both programs, mass changes in GA payments shall be subject to the schedule in paragraph (e)(3) and the procedures in paragraphs (e) (4), (5) and (6) of this section.

(3) *Mass changes in Federal benefits.* The State agency shall establish procedures for making mass changes to reflect cost-of-living adjustments (COLAs) in benefits and any other mass changes under RSDI, SSI, and other programs such as veteran's assistance under title 38 of the United States Code and the Black Lung Program, where information on COLA's is readily available and is applicable to all or a majority of those programs' beneficiaries. Households on retrospective budgeting but not monthly reporting shall have the change reflected in accordance with the State's system. Monthly reporting households shall report the change on the appropriate monthly report but are not required to report these types of changes outside the monthly report. The State agency shall handle such information provided on the monthly report in accordance with its normal procedures. Households not subject to monthly reporting shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting a household's food stamp benefit level. The change shall be reflected no later than the second allotment issued to nonmonthly reporting households issued after the month in which the change becomes effective.

(4) *Notice for Mass Changes.* When the State agency makes a mass change in food stamp eligibility or benefits by simultaneously converting the caseload or that portion of the caseload that is affected, or by conducting individual desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated in accordance with the requirements of this paragraph, except for mass changes made under § 273.12(e)(1); and

(i) At a minimum, the State agency shall inform the household of:

(A) The general nature of the change;

(B) Examples of the change's effect on households' allotments;

(C) The month in which the change will take effect;

(D) The household's right to a fair hearing;

(E) The household's right to continue benefits and under what circumstances benefits will be continued pending a fair hearing;

(F) General information on whom to contact for additional information; and

(G) The liability the household will incur for any overissued benefits if the fair hearing decision is adverse.

(ii) At a minimum, the State agency shall notify the household of the mass change or the result of the desk review on the date the household is scheduled to receive the allotment which has been changed.

(iii) In addition, the State shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(5) *Fair hearings.* The household shall be entitled to request a fair hearing when it is aggrieved by the mass change.

(6) *Continuation of benefits.* A household which requests a fair hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets three criteria;

(i) The household does not specifically waive its right to a continuation of benefits;

(ii) The household requests a fair hearing in accordance with § 273.13(a)(1); and

(iii) The household's fair hearing is based upon improper computation of food stamp eligibility or benefits, or upon misapplication or misinterpretation of Federal law or regulation.

* * * * *

21. In § 273.13:

a. The amendment to § 273.13 to revise paragraph (a)(3) in its entirety, as published at 47 FR 55910, December 14, 1982, is adopted with some changes. Those provisions of the revised paragraph (a)(3) from this earlier amendment which are adopted final without change are the introductory text of paragraph (a)(3) and paragraphs (a)(3)(i) and (a)(3)(vi).

b. Paragraphs (a)(3)(ii), (a)(3)(iii), (a)(3)(iv) and (a)(3)(v) are revised.

c. The introductory text of paragraph (b) is revised and new paragraphs (b)(12) and (b)(13) are added.

The revision and additions read as follows:

§ 273.13 Notice of adverse action.

(a) *Use of notice.* * * *

(3) * * *

(ii) The reported information is in writing and signed by the household.

(iii) The State agency can determine the household's allotment or ineligibility based solely on the information provided by the household as required in paragraph (a)(3)(ii) of this section.

(iv) The household retains its right to a fair hearing as allowed in § 273.15.

(v) The household retains its right to continued benefits if the fair hearing is requested within the time period set by the State agency in accordance with § 273.13(a)(1).

* * * * *

(b) *Exemptions from notice.* Individual notices of adverse action shall not be provided when:

* * * * *

(12) The household voluntarily requests, in writing or in the presence of a caseworker, that its participation be terminated. If the household does not provide a written request, the State agency shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

(13) The State agency determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. The State agency shall inform the household of its termination no later that its next scheduled issuance date. While the State agency may inform the household before its next issuance date, the State agency shall not delay terminating the household's participation in order to provide advance notice.

22. Section 273.14 is revised in its entirety to read as follows:

§ 273.14 Recertification.

(a) *Action on applications for recertifications.*

(1) The State agency shall complete the application process if the household meets all requirements and finishes the necessary processing steps, and approve or deny timely applications for recertification prior to the end of the household's current certification period.

(2) In addition, any eligible household shall be provided an opportunity to participate by its normal issuance cycle in the month following the end of its current certification period. However, the household shall lose its right to uninterrupted benefits for failure to attend any interview sheduled on or after the deadline for timely filing of the application for recertification in paragraph (c) of this section or to submit all necessary verification within the timeframe established by the State agency as long as the timeframe elapses after the deadline for filing a timely application for recertification. Although a household loses its right to uninterrupted benefits for such failures, the household shall not be denied at that time, unless it refused to cooperate or the certification period has lapsed, if the State agency chooses to make denials at that time. If the household loses its right to uninterrupted benefits due to such failures but is otherwise eligible after correcting such failures, the State agency shall, at a minimum, provide benefits within 30 days after the date the application was filed. In addition, the State agency may, at its option, either provide benefits by the household's next normal issuance date or provide uninterrupted benefits to a household determined eligible despite such failures.

(3) Denials, including those for failure to complete the interview or provide missing verification timely, shall be completed either by the end of the current certification period or within 30 days after the date the application was filed as long as the household has had adequate time for providing the missing verification.

(4) The State agency shall not continue benefits due to the household beyond the end of the certification period unless the household has been recertified. The joint processing requirements in § 273.2(j) for PA and GA households shall continue to apply to applications for recertification.

(b) *Notice of expiration.* (1) The State agency shall provide each household with a notice of expiration at the end of its certification prior to the start of the last month of the household's certification period. PA and GA households whose applications were jointly processed for food stamps and PA or GA benefits in accordance with § 273.2(j) need not receive a notice of expiration if they are recertified for food stamps at the same time as their PA or GA redetermination.

(2) The State agency shall establish timeframes for providing notices of expiration to households that must receive such notices. These timeframes shall ensure that any household certified for one month or when the certification action is not completed until the second month of a two-month certification that a notice of expiration is provided at the time of certification. The State agency's timeframes shall ensure that any other household is provided a notice of expiration at least one day before the last month, but no earlier than the next to the last month, of the certification period.

(3) Each State agency shall develop a form for notifying a household of the expiration of its certification. A model form for notifying a household of the expiration of its certification is available from FNS for use by any State agency. If feasible, the State agency is encouraged to include an application form and/or notify the household of a scheduled appointment for an interview with the notice of expiration. The form for notifying a household of the expiration of its certification shall contain the following information and any additional information the State agency determines is useful: (i) The date the current certification period ends; (ii) the date by which the household must file an application for recertification to receive uninterrupted benefits; (iii) notice that the household must appear for any interview scheduled on or after the date the application is timely filed in order to receive uninterrupted benefits; (iv) notice that the household is responsible for rescheduling any missed interview; (v) that the household must complete the processing steps of the interview and provide all required verification in order to receive uninterrupted benefits; (vi) if applicable, the number of days the household has for submitting missing verification, after the State agency informs the household at the interview of any further verification needed to receive uninterrupted benefits; (vii) the household's right to request an application and have the State agency accept an application as long as it is signed and contains a legible name and address; (viii) the address of the office where the application must be filed; (ix) the consequences of failure to comply with the notice of expiration; (x) the household's right to file the application by mail or through an authorized representative; (xi) the household's right to request a fair hearing; and (xii) the fact that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration (SSA).

(c) *Timely application for recertification.* (1) Non-monthly reporting households that are certified for one month or certified for two months in the second month of certification shall have 15 days from the date the notice of expiration is received to file a timely application for recertification. All other non-monthly reporting households which submit identifiable applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification. For monthly reporting households, the

filing deadline shall be the normal date for filing a monthly report. For households consisting of applicants or recipients of SSI which apply for food stamp recertification at offices of the SSA in accordance with § 273.2(k)(1)(ii), an application shall be considered filed for normal processing purposes when the signed application is received by the SSA.

(2) Any household receiving a notice of expiration shall attend any interview scheduled by the State agency on or after the date the application is timely filed in order to retain its right to uninterrupted benefits. The State agency may schedule the interview prior to the date the application is timely filed, provided the household is not denied at that time for failing to appear for the interview. The State agency shall schedule the interview on or after the date the application was timely filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview. If the household does not appear for any interview scheduled in accordance with this section, the State agency need not initiate any further action.

(3) The State agency may establish timeframes within which the household must submit any required verification requested at the interview in order to ensure its rights to uninterrupted benefits, provided that the household is allowed at least 10 calendar days from the date of the State agency's initial request for the particular verification that is missing. Any State agency which chooses to establish timeframes for the submission of missing verification shall ensure that any household which timely reapplies does not lose its right to uninterrupted benefits for failure to submit any requested verification prior to the date the household submits a timely application for recertification, and that the household is adequately informed of this procedure.

(d) *State agency action on timely applications for recertification.* The State agency shall act to provide uninterrupted benefits to any household determined eligible after the household timely filed an application, attended an interview in accordance with the requirements in this section, and submitted all necessary verification within the State agency's timeframe. The State agency shall take action to provide uninterrupted benefits within the following time standards even if, to meet these standards, the State agency must provide an opportunity to participate outside of the normal issuance cycle:

(1) Households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures shall be notified of their eligibility or ineligibility and, if eligible, be provided an opportunity to participate no later than 30 calendar days after the date the household had an opportunity to obtain its last allotment.

(2) For all other households that have met all required application procedures, the State agency shall approve or deny the application and notify the household of its determination by the end of the current certification period. In addition, for households determined eligible, the State agency shall provide an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period. Any household not determined eligible in sufficient time to provide for issuance in that timeframe due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household supplies the missing verification. Households which have timely submitted an application for recertification but, due to State agency error, are not determined eligible in sufficient time to provide for issuance by the household's next normal issuance cycle shall receive an immediate opportunity to participate upon being determined eligible.

(e) *State agency failure to act.* State agency failure to provide an opportunity to participate within the timeframes in paragraph (d) of this section to an eligible household which has filed a timely application for recertification and met all processing steps in a timely manner shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

(f) *When a household fails to act.* (1) A household which submits a timely application for recertification and meets all other processing steps in a timely manner shall have the right to receive uninterrupted benefits. However, a household which fails to appear for an interview in accordance with the requirements in this section or to submit any missing verification within the State agency's timeframes shall lose its right to uninterrupted benefits as long as such failures occur after the deadline for filing a timely application for recertification in paragraph (c) of this section. Households which refuse to cooperate in providing required information shall be denied.

(2) Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses of non-monthly reporting households need not be verified if the source has not changed and the amount has not changed by more than $25. The State agency shall ensure that any eligible household which did not submit a timely application for recertification is provided an opportunity to participate within 30 calendar days after the application is filed. If the household's application for recertification is received after the household's certification period has expired, the household's benefits shall be prorated in accordance with § 273.10(a)(2). However, households which receive a notice of expiration at the time of certification and which are otherwise eligible shall not have benefits for the first month of the new certification period prorated if they file their applications for recertification by the filing deadline in the notice of expiration. In addition, households which are otherwise eligible and which reside in a State which adopted the optional verification timeframe shall not be subject to proration in the first month of the new certification period if the verification timeframe elapses in the first month of the new certification period.

(3) A household which submits a timely application for recertification but is either interviewed and/or submits all verification in an untimely manner (but before the end of its current certification period) need not be provided uninterrupted benefits. For eligible households under these circumstances, the State agency shall, at a minimum, provide the household an opportunity to participate within 30 calendar days after the date the application was filed.

(4) If the State agency is unable to provide an eligible household with an opportunity to participate within 30 calendar days after the date the application was filed due to the time period allowed for submitting any missing verification, the State agency shall provide the household an opportunity to participate within 5 working days after the date the household supplies the missing verification.

§ 273.15 [Amended]

23. In § 273.15, the first sentence of paragraph (e) is amended by replacing the word "conduction" with the word "conducting".

24. In § 273.16:

a. The third sentence of paragraph (e)(1) is amended by replacing the phrase "And, if" with the word "If".

b. Paragraph (e)(6) is amended by replacing the reference to "paragraphs (c)" with a reference to "paragraph (c)".

c. The third sentence of paragraph (e)(9)(ii) is amended by adding the word "the" between the words "date" and "disqualification".

d. The second sentence of paragraph (e)(10)(i) is amended by adding a comma after the word "violation", removing the comma and the word "as" appearing after the word "decision", removing the comma after the word "section", and adding the word "the" between the word "date" and "disqualification".

e. The third sentence of paragraph (g)(3) is amended by adding the word "the" between the words "date" and "disqualification".

§ 273.18 [Amended]

25. In § 273.18, paragraph (d)(4)(ii) is amended by removing the comma and the word "as" appearing in the phrase "action, as specified" and removing the comma after the word "section", and paragraph (g)(3) is amended by replacing the reference to "§ 273.10(e)(2)(ii)(B)" with a reference to "§ 273.10(e)(2)(ii)(C)".

§ 273.20 [Amended]

26. In § 273.20, paragraph (a) is amended by replacing the reference to "Health, Education and Welfare" with a reference to "Health and Human Services".

§ 273.21 [Amended]

27. In § 273.21:

a. The first sentence of paragraph (a)(1) is amended by replacing the word "and" appearing after the phrase "a one-month" with the word "or".

b. Paragraph (b)(2) is amended by removing the regulatory designation of "(i)" and replacing the regulatory designations of "(A)" and "(B)" with a designation of "(i)" and "(ii)", respectively.

c. The second sentence of paragraph (d)(2) is amended by replacing the word "and" appearing in the phrase "except when and additional" with the word "an".

d. Paragraph (h)(2)(ii) is amended by replacing the reference to "§ 272.4(c)" with a reference to "§ 272.4(b)".

e. Paragraph (h)(3)(iii) is removed and paragraph (h)(3)(iv) is redesignated as paragraph (h)(3)(iii).

f. The introductory text of paragraph (j)(1) is amended by adding the word "a" before the words "monthly report".

§ 273.22 [Amended]

28. In § 273.22:

a. The second sentence of paragraph (b)(6) is amended by replacing the word "operations" with the word "operation".

b. Paragraph (c)(7) is amended by replacing the word "provision" with the word "provisions".

c. Paragraph (d) is amended by removing the title headings for paragraphs (d)(5), (d)(6) and (d)(7).

d. Paragraph (f)(2)(xiii) is amended by replacing the reference to "§ 272.7(a)" with a reference to "§ 272.6(a)".

e. Paragraph (f)(6)(iii)(A) is amended by removing the comma appearing in the phrase "dependent care, and excess shelter".

f. Paragraph (g) is amended by adding a title headng to paragraph (g)(1) which reads "*Administrative costs.*".

g. The first sentence of paragraph (g)(4)(ii)(B) is amended by replacing the word "beside" with the word "besides".

PART 275—PERFORMANCE REPORTING SYSTEM

29. In § 275.8, paragraph (b)(2)(xii) is revised to read as follows:

§ 275.8 Review coverage.

* * * * *

(b) *Certification Requirements.* * * *

(2) * * *

(xii) The project area either mails or provides for the pickup of either coupons or an ATP to households eligible for expedited service in accordance with the timeframes specified in § 273.2(i)((3)(i).

* * * * *

Dated: March 20, 1986.

Robert E. Leard,

Administrator.

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