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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

Federal Employees Retirement System; Death Benefits and Employee Refunds

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising (1) the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities and (2) the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees Retirement System (FERS) Act of 1986. These rules are necessary to conform the tables to the previously published economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-5560.

SUPPLEMENTARY INFORMATION: On June 18, 1987, OPM published (52 FR 23222) a notice in the *Federal Register* to revise the normal costs percentages under the FERS Act of 1986, Pub. L. 99-335, based on changed economic assumptions. Those changed economic assumptions (principally the change in expected investment return from 6.5% to 7.0%) require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act.

Section 843.309 of Title 5, Code of Federal Regulations, regulates the payment of the basic employee death benefit. Under section 8442(b) of Title 5,

United States Code, the basic employee death benefit may be paid as a lump sum or as an equivalent benefit in 36 installments. These rules amend § 843.309(b)(2) of Title 5, Code of Federal Regulations, to conform the factor used to convert the lump sum to 36-installment payments with the revised economic assumptions.

Section 843.311 of Title 5, Code of Federal Regulations, regulates the benefits for the survivors of separated employees under section 8442(c) of Title 5, United States Code. This section provides a choice of benefits for eligible current and former spouses. If the current or former spouse is the person entitled to the unexpended balance under the order of precedence in section 8424 of Title 5, United States Code, he or she may elect to receive the unexpended balance instead of an annuity.

Alternatively, an eligible current or former spouse may elect to receive an annuity commencing on the day after the employee's death or on the deceased separated employee's 62nd birthday. If the annuity commences on the deceased separated employee's 62nd birthday, it equals 50 percent of the annuity that the separated employee would have received when he or she attained age 62. If the current or former spouse elects the earlier commencing date, the annuity is reduced using the factors in Appendix A to Subpart C of Part 843 to make the annuity actuarially equivalent to the annuity that he or she would have received if it commenced on the retiree's 62nd birthday. These rules amend that appendix to conform with the revised economic assumptions.

Under section 553 (b)(3)(B) and (d)(3) of Title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. These rules are required by changes in economic assumptions that have already been published. Providing a comment period on the result of mathematical computations resulting from the changed economic assumptions is unnecessary, and to the extent that it would delay benefit payments is contrary to the public interest.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

1. The authority citation for Part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; Sections 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; Section 843.309 also issued under 5 U.S.C. 8442; Section 843.406 also issued under 5 U.S.C. 8441.

2. In § 843.309, paragraph (b)(2) is revised to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *
(2)(i) For deaths occurring before October 1, 1987, 36 equal monthly installments of 3.05642 percent of the amount of the basic employee death benefit.

(ii) For deaths occurring on or after October 1, 1987, 36 equal monthly installments of 3.06921 percent of the amount of the basic employee death benefit.

3. Appendix A to Subpart C is revised to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

With at least 10, but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	0.0280
27	.0309
28	.0340
29	.0375
30	.0413
31	.0454
32	.0500
33	.0550
34	.0605
35	.0665
36	.0731
37	.0804
38	.0884
39	.0973
40	.1071
41	.1179
42	.1298
43	.1430
44	.1577
45	.1739
46	.1920
47	.2121
48	.2346
49	.2597
50	.2878
51	.3193
52	.3544
53	.3934
54	.4365
55	.4842
56	.5367
57	.5948
58	.6591
59	.7305
60	.8103
61	.8996

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	0.0901
37	.0991
38	.1090
39	.1199
40	.1319
41	.1452
42	.1600
43	.1762
44	.1943
45	.2144
46	.2367
47	.2615
48	.2892
49	.3202
50	.3548
51	.3936
52	.4369
53	.4851
54	.5383
55	.5971
56	.6620
57	.7337
58	.8131
59	.9015

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multipliers by separated employee's year of birth		
	After 1964	From 1949 to 1964	Before 1949
46	0.3224	0.3573	0.3962
47	.3562	.3948	.4378
48	.3940	.4367	.4842
49	.4362	.4835	.5361
50	.4835	.5359	.5942
51	.5363	.5945	.6592
52	.5954	.6599	.7317
53	.6610	.7327	.8124
54	.7336	.8132	.9017
55	.8139	.9021	.0000

Age of separated employee at birthday before death	Multipliers by separated employee's year of birth		
	After 1964	From 1949 to 1964	Before 1949
56	.9023		

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 277

[Amendment No. 298]

Food Stamp Program; Provisions of the Stewart B. McKinney Homeless Assistance Act and the Provision on the Treatment of Third-Party Payments From the Food Security Act of 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule and correction.

SUMMARY: This action amends Food Stamp Program (FSP) regulations to address all the FSP provisions contained in Pub. L. 100-77, the Stewart B. McKinney Homeless Assistance Act enacted July 22, 1987. The majority of the provisions are intended to help homeless individuals obtain Food Stamp Program eligibility and benefits. The provisions of Pub. L. 100-77 included in this action affect the areas of Program informational activities, definitions, household concept, expedited service, excess shelter expense deduction amounts for October 1987, annual adjustments to the standard and shelter deductions, annual adjustments to the income eligibility limits, and the calculation of claims. This action also addresses a provision contained in Pub. L. 99-198, the Food Security Act of 1985 relative to the treatment of third-party payments made on behalf of food stamp households. The 1985 provision was amended by the Stewart B. McKinney Homeless Assistance Act. Thus, both legislative provisions are addressed in this action. In addition, this action corrects a regulatory cite in Part 277.

DATES: The provisions of this action are effective, and must be implemented, as follows: the definition of "General assistance" in § 271.2, § 273.9(b)(2)(i), new § 273.9(c)(1)(ii)(A), § 273.9(c)(1)(ii)(B), § 273.9(c)(1)(ii)(C), and § 273.9(c)(1)(iv)(B) are effective retroactively to April 1, 1987; § 271.2 the removal of the definition of "Homeless food stamp household" and addition of the definition of "Homeless individual"

in § 271.2 is effective retroactively to July 22, 1987; § 273.1(a)(2)(i)(C), § 273.1(a)(2)(i)(D), § 273.10(f)(2), § 273.9(d)(7)(i), and first, second, and third sentences of § 273.9(d)(8)(i) are effective October 1, 1987; § 273.9(c)(1)(ii)(D) is effective for the period beginning October 20, 1987 and ending September 30, 1989; § 273.2(i) is effective December 1, 1987; § 273.9(a)(3) is effective July 1, 1988; the last sentence of § 273.9(d)(8)(i) is effective October 1, 1988; § 272.5 is effective retroactively to July 22, 1987; § 273.18 is effective retroactively to September 5, 1987. Section 272.1(g)(93) and the technical amendments to Part 277 are effective September 29, 1987. Comments must be received on or before December 28, 1987 to be assured of consideration.

ADDRESSES: Comments should be submitted to Bruce Clutter, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments shall be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this action as nonmajor. This action will not have a significant effect on the economy. This action will have little, if any, effect on cost 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 and related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive

Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Some potentially eligible households will become aware of the availability of the Program. Some currently ineligible households will become eligible for Program benefits. Some currently participating households will realize an increase in Program benefits.

Interim Rule

The provisions of this rulemaking which implement Pub. L. 100-77, are required to be effective on the specific dates mandated for each provision in accordance with the statute. The provisions of this rulemaking which implement Pub. L. 99-198, are specifically required by section 1508(2) of that statute to be effective not later than April 1, 1987. Since prior notice and comment rulemaking procedures cannot be completed before the statutory effective dates for the majority of the provisions contained in this action, Anna Kondratas, Administrator of the Food and Nutrition Service, has determined, pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable. For the same reason, good cause is found pursuant to 5 U.S.C. 553(d) for the publication of this rulemaking less than thirty days prior to the effective dates for some of the provisions. In addition, a number of the provisions in this rulemaking, including the expedited service provision, § 273.2(i), are interpretive rules. However, because the Department believes that the administration of the rule may be improved by public comment, comments are solicited on this rule for 90 days. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

Paperwork Reduction Act

Information collection requirements associated with the Food Stamp Program application form are approved under OMB No. 0584-0064. Changes required to be made to the application

as a result of the provision in § 273.2(i) of this action do not significantly alter the methodologies used to determine the burden estimates currently approved for the application under OMB No. 0584-0064.

Background

Program Information for the Homeless—Section 272.5 and Part 277

Section 808 of Pub. L. 100-77 amends section 11(e) of the Food Stamp Act to allow State agencies the option of carrying out Program informational activities directed toward homeless individuals. The statute also amends section 16(e) of the Food Stamp Act to provide for Federal funding of one-half the cost of such activities. Use of this option is intended to ensure that the homeless are aware of their potential eligibility for food stamp benefits.

Under the Food Stamp Act, State agencies were required to conduct outreach activities to encourage persons who were potentially eligible for food stamps to apply for them. Legislation enacted in 1981 prohibited the Department from reimbursing State agencies for outreach activities. However, State agencies still had the option to conduct outreach activities provided they used their own funds. State agencies may have continued to conduct outreach activities using their own funds.

These regulations allow State agencies, at their option, to carry out Program informational activities for the homeless in the Food Stamp Program. The regulations also exclude the costs of these activities from nonreimbursable outreach costs. The rule clarifies that the Department will only reimburse State agencies that choose to implement this provision for the cost of Program informational activities aimed specifically at the homeless. Costs of Program informational activities designed to inform the general public about the availability of the Program will not be reimbursed, even though the homeless would be included in that population. The rules do not impose specific standards for providing Program information to the homeless because the Department believes that State agencies are in the best position to determine how to reach the homeless. Thus, the regulations give State agencies maximum flexibility to implement the provision. State agencies may wish to focus their efforts in this area on shelters for the homeless, soup kitchens, emergency feeding facilities, and the like.

The Department is also taking this opportunity to make a technical

amendment to current rules. A reference to § 272.6 contained in 7 CFR 277, Appendix A, paragraph C(14) is being changed to a reference to § 272.5. Section 272.6 was redesignated as § 272.5 by a previous rule and is hereby corrected.

Expedited Service—Section 273.2(i)

Section 809 of Pub. L. 100-77 amends section 11(e)(9) of the Food Stamp Act to include two more types of households that would be entitled to receive benefits under the Food Stamp Program's expedited service procedures.

Current regulations at 7 CFR 273.2(i) provide for expedited service to migrant and seasonal farm workers who are destitute and households with less than \$150 in monthly gross income. Both of these types of households must also have liquid resources of \$100 or less to qualify for expedited service. The Food Stamp Act requires that State agencies provide such households with coupons not later than five calendar days following the household's date of application.

Pub. L. 100-77 requires that benefits also be provided not later than five days following a household's date of application for eligible households in which all members are homeless individuals and eligible households whose combined gross income and liquid resources are less than the household's monthly rent or mortgage and utilities. Legislative history clarifies that this provision is intended to apply only to those households that otherwise meet food stamp eligibility standards, including rules governing household composition and the eligibility of those in institutions. (H.R. Rep. No. 100-174, 100th Cong., 1st Sess. 104 (1987)). Accordingly, this action amends 7 CFR 273.2(i) to provide that expedited service shall be available to eligible homeless households and households whose monthly gross income and liquid resources are less than their monthly rent or mortgage, and utilities costs.

Definitions—Section 271.2

Current regulations at 7 CFR 271.2 define a "homeless food stamp household" as an eligible food stamp household which does not have a fixed mailing address or does not reside in a permanent dwelling. This definition was adopted for Program purposes by regulations published March 11, 1987 for implementing the Homeless Eligibility Clarification Act (1986). With enactment of Pub. L. 100-77, this definition is no longer necessary. Section 801 of Pub. L. 100-77 amends section 3 of the Food Stamp Act to establish a statutory

definition of "homeless individual". The statute defines a homeless individual as an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is: (1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter); (2) a halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized; (3) a temporary accommodation in the residence of another individual; or (4) a place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places). This action amends 7 CFR 271.2 to remove the current definition of homeless food stamp household and add the statutory definition of homeless individual. This definition is generally consistent with the current definition of homeless food stamp household and with Congressional intent surrounding enactment of the Homeless Eligibility Clarification Act.

Individuals Living with Parents/Siblings—Sections 273.1(a) and 273.10(f)

Prior to the passage of Pub. L. 100-77, the Food Stamp Act provided that parents and children living together and siblings living together shall be considered as one household for Food Stamp Program purposes, unless at least one of the parents/siblings is elderly or disabled.

Section 802 of Pub. L. 100-77 amends section 3 of the Food Stamp Act to allow a parent, with his/her minor children, to live together with the parent's sibling and yet be considered a separate household if the parent with minor children purchases food and prepares meals separately from the parent's sibling. The statute also allows three generations living together to form two separate households if the parent with minor children purchases and prepares meals separately from the children's grandparent(s). Accordingly, this action amends 7 CFR 273.1(a) to provide that an individual who is the parent of minor children, along with that individual's children and spouse, may be granted separate household status if the individual and that individual's children are living with the individual's parent or sibling and purchasing and preparing meals separate from the parent/sibling. It is the Department's intent that current policy be applied to this provision when determining who constitutes a minor child. Current policy has traditionally considered children under 18 years of age who are under the parental control

of an adult household member to be minors.

Additionally, this action amends 7 CFR 273.10(f) to provide that such households shall be assigned a certification period that shall not exceed six months. Section 802 of Pub. L. 100-77 specifically provides that such households be subject to reexamination at least once every six months.

Income Eligibility Limit Updates—Section 273.9(a)(3)

The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income (SSI) benefits, is determined by comparing their incomes to the appropriate income eligibility limits. Households containing an elderly or disabled member only need to have net incomes below the net income limit. Households which do not contain an elderly or disabled member must have net incomes below the net income limits and gross incomes below the gross income limits. Households in which all members are receiving PA or SSI benefits are categorically eligible and do not have to meet the income limits.

The gross and net income limits are derived from the Federal income poverty guidelines. The gross income limit is 130 percent of the guidelines; the net income limit is 100 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility limits are updated annually.

Currently, the updates of the Food Stamp Program's income eligibility limits are effective July 1 each year. This schedule was changed by section 803 of Pub. L. 100-77. Beginning with the 1988 update, the change in the income eligibility limits will be effective each October 1. The update effective on July 1, 1987, will remain in effect until October 1, 1988. Accordingly, this action amends 7 CFR 273.9(a)(3) to reflect that the Program's income eligibility limits for Fiscal Year 1989 and each subsequent year will be updated each October 1.

Third-party Payments—Section 273.9(c)(1)

Congress passed legislation on December 23, 1986 (Pub. L. 99-198) which contained a provision governing the treatment of public assistance (PA) and general assistance (GA) vendor payments as income. Before the Department promulgated regulations to implement this provision, the provision was further amended by Pub. L. 100-7. Pub. L. 100-77 contains a provision which supercedes, for a limited time, a

portion of the vendor payment policies based on the provisions of Pub. L. 99-198 which are implemented by this rulemaking. The following preamble discussion will first address the provisions of Pub. L. 99-198 and related policy determinations by the Department. Then the preamble will address the effect of the provisions of Pub. L. 100-77 which are being implemented.

Public Law 99-198

Section 5(d) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)) excludes from the definition of income any gain or benefit which is not in the form of money payable directly to a household. The legislative history accompanying this provision clarified that any money payable to a household, but diverted to a third party (vendor payments) either of the household's own free will or involuntarily would be counted as income and would not be excluded. House Report No. 95-464, 95th Cong., 1st Sess., June 24, 1977, page 34. Based on this legislative history and notice and comment rulemaking in 1978, the Program's regulations at 7 CFR 273.9(c)(1)(iii) provide that money obligated or otherwise payable to the household, but diverted to a third party, shall be considered income and not excluded as a vendor payment. For more details see preamble discussions at 43 FR 18888, 47865 and 47904 (1978).

Longstanding Department regulatory policy is that public assistance (PA) and most general assistance (GA) vendor payments provided by State and local governments fall under this provision because the payments are provided from funds that otherwise would be payable to the household. However, for GA vendor payments this policy has been challenged in court suits. Some States, localities and households have argued that some GA payments should be excluded from income even where they are otherwise payable to the household. Partially in response to that litigation, "the Senate Committee has included a new statutory provision to help assure that the Federal Government's position is upheld and Congressional intent is served." S. Rept. 145, 99th Cong., 1st Sess., pg. 234; reprinted at 1985 U.S. Code Cong. & Ad. News, 1900. This new provision, section 1508(2) of the Food Security Act of 1985, Pub. L. 99-198, amended section (5) of the Food Stamp Act to specifically provide that assistance payable for living expenses by PA or State or local GA programs, or other basic assistance programs comparable to GA as determined by the Secretary, shall be, with certain

exceptions, considered income to the household if diverted to a third party on behalf of the household. See Senate Report 99-145, 99th Cong., 1st Sess., page 234; reprinted at 1985 U.S. Code Cong. & Ad. News 1899-1900. That Senate Report notes that this provision "will reinforce Congress' historical intent that payments from governmental assistance programs be included as income regardless of their form * * *." Id. This action amends 7 CFR 273.9(c) to specifically state that PA and State and local GA grants or benefits issued in the form of vendor payments are income and not excluded as a vendor payment, except under certain specified conditions.

As provided by the statute, the Secretary must determine which State and local basic assistance programs are comparable to a GA program. It is the Department's opinion that any State or local program which provides assistance on a regular or on an as needed basis to meet a household need which would safeguard health or improve personal well-being is a program consistent with the characteristics of most State and local GA programs. For example, the State or local program may provide the household with a check or voucher to present to a store to deal with a wide variety of needs such as food, furniture and clothing. These types of programs are, in the Department's opinion, providing assistance to meet household needs that would safeguard health or improve well-being.

Accordingly, this action amends the definition of "general assistance" at 7 CFR 272.2 to provide that general assistance means assistance financed by State or local funds and provided through a program intended to cover living expenses or other basic household needs which would safeguard health or improve well-being. A program which provides only in-kind assistance (i.e.; gives the recipient food, rather than a vendor payment), would continue to be excluded under the definition. Any State or local program which meets the amended definition would be considered to be a GA program for FSP purposes and the assistance would be considered income, even if provided in the form of a vendor payment.

The Department believes that implementing the statutory provision through a redefinition of general assistance is administratively more feasible than identifying various State or local programs by name or some other special characteristic. The characteristics of the definition would encompass a State or local GA program and those programs which the

Department considers to be comparable to GA, but are not so named by the State or local government. The Department believes that the definition of general assistance implements the statutory reaffirmation of Department rules and meets the intent of Congress "that payments from government assistance programs be included as income * * *" and to "ensure equity between groups of individuals who receive assistance in varying forms." See Senate Report 99-145 as cited above.

Additionally, some States and localities which disburse payments in the form of two-party checks or vouchers have challenged that the assistance is not "general assistance" as defined at 7 CFR 271.2 which currently implies that general assistance means "cash assistance" financed by State and local funds. Legislative history accompanying Pub. L. 99-198 clarifies that general assistance is provided in many different names and in different forms but that "none of these distinctions would matter, since any governmental payments made to the provider of goods or services on behalf of a household (in lieu of payment made directly to a household) would be included as income unless specifically excluded by regulation under 7 U.S.C. 2014(k)(2)(E) * * *." S. Rept. 99-145, Id. The Department has the discretion to determine whether payments, by whatever name, are for living expenses, and, in effect, part of a regular program of aid and thus subject to treatment as income under the provision. See Senate Report 99-145 as cited above. Therefore, this action further amends the definition of general assistance at 7 CFR 271.2 to include cash assistance and other forms of assistance financed by State or local funds.

Section 5 of the Food Stamp Act, as amended by section 1508(2) of Pub. L. 99-198, provides that medical, child care and energy assistance, and assistance provided by State or local housing authorities are excluded from the provision. The legislative history accompanying Pub. L. 99-198 clarifies that " * * * as specified in current regulations, medical, energy and child care assistance would not be included as income" under this provision. Senate Report 99-145, at 233; reprinted at 1985 U.S. Code Cong. & Ad. News 1899-1900. The reference to an exclusion for assistance provided by State and local housing authorities was added to the statute during Congressional Conference and it is assumed that this additional exclusion was also intended to exclude such assistance in the same manner as it

is currently excluded. See House Conf. Rept. 99-447, 99th Cong., 1st Sess., p. 523; reprinted at 1985 U.S. Code Cong. & Ad. News 2449. Current rules at 7 CFR 273.9(c)(1) already contain a provision that address the exclusion from income of assistance from State and local housing authorities as vendor payments. This action amends 7 CFR 273.9(c)(1) to add a specific income exclusion provision for public assistance and general assistance vendor payments for medical, child care or energy assistance. Current rules at 7 CFR 273.9(c)(11) define energy assistance for the purpose of providing an income exclusion for cash energy assistance. The rule clarifies that the same definition of energy assistance is applicable for the purpose of providing an income exclusion of a PA or GA vendor payment for energy assistance. The Department does not believe it necessary to further define medical or child care assistance for this income exclusion provision.

Pub. L. 99-198 also provides a specific exclusion for State or local emergency or special assistance vendor payments, as determined by the Secretary. Current rules at 7 CFR 273.9(c)(1)(iii)(B) allow an exclusion for such assistance in that payments are excluded to the extent that the payment is not normally provided as part of a PA grant and is provided over and above the normal PA grant even if it is otherwise payable to the household.

The Department intends to continue to use the general policy that excluded assistance cannot be part of the normal PA grant and must be provided over and above the normal PA grant to be considered "emergency" or "special" assistance" and expands this policy to include GA. Accordingly, this action amends 7 CFR 273.9(c)(iii)(B) to allow an income exclusion for any State or local assistance payments that would not normally be provided as part of the normal PA or GA grant or benefit and that are provided over and above the normal PA or GA grant or benefit, where such payments are made to a third party on behalf of the household for a household expense.

There has been some confusion as to what is considered to be "part of the normal PA grant and over and above the normal PA grant." The Department is taking this opportunity to clarify this policy. By way of explanation, most PA and GA grants are composed of various needs-based components or standards for such expenses as, but not limited to, shelter, transportation, food and clothing for categories of persons in need of or eligible for such aid. A

maximum payment amount and/or rate of payment is established for each component. To the extent that State or local assistance is not included as a regular component of a PA or GA grant or benefit or to the extent that the amount exceeds the maximum rate of payment established for the relevant component, the assistance would be considered over and above the normal grant and not part of the grant. For example, if this same PA or GA program provides all persons with school age children a monthly "extra" children's clothing allowance, and this was paid through a vendor payment directly to a clothing store, that allowance would not be excluded under this provision because it is part of the regular monthly assistance for all households in that category and is not really an "extra" payment. On the other hand, if a fire destroyed the household's clothing and it receives an "emergency" amount paid to a clothing store, that amount could be excluded under the provision. Where the program is not composed of various standards or components, but is simply designed to provide assistance on an as needed basis for the particular household need in question, it is the Department's view that such assistance is not provided over and above the normal grant. For example, if the program provides the household with a food voucher to present to a store, the value of the voucher is not excluded as emergency or special assistance under this provision because it is not over and above the normal grant, it is the normal grant. These examples have been incorporated into the regulations at 7 CFR 273.9(c)(1)(iii)(B) for clarification of the provision. Please note that 7 CFR 273.9(c)(1)(iii)(B) is redesignated by this action as 7 CFR 273.9(c)(1)(iv)(B).

This clarified policy establishes the framework for considering certain vendor payments as "emergency" or "special". However, FNS has reviewed various State and local vendor payment assistance programs and believes that it would be difficult to establish rules to cover all situations that might arise in the nation. Thus, this action also amends 7 CFR 273.9(c)(iii)(B) to provide that if it is not clear that certain PA or GA vendor payments established for dealing with emergency and special situations are excluded under the general policy, the State agency must apply to FNS for an exclusion determination. Under the rule, State agencies would apply to the appropriate FNS regional office. The State would have to precisely explain the nature of the vendor payment, the type of assistance it provides, who is eligible to

receive the assistance, how the State or local government makes the payment and how the vendor payment fits into the overall public assistance or general assistance scheme. A copy of the rules, ordinances or statutes which create and authorize the program should accompany the application for the exclusion. Once FNS has gained more experience in this area it is possible that other more specific rules may be published.

Public Law 100-77

Based on current regulations at 7 CFR 273.9(c)(1), a PA or GA housing assistance payment made to a third party on behalf of a household residing in temporary housing facilities for the homeless can only be partially excluded from income as emergency or special assistance. (See 7 CFR 273.9(c)(1)(iii)(B)) The only portion which is excluded is that portion of the assistance provided over and above the normal shelter cost component of a regular PA or GA grant. For example, where a PA or GA program is designed to provide a monthly grant or allowance which contains a standard shelter cost component of \$200 for all households and the State or local government provides a total of \$500 (\$200 plus an additional \$300 monthly rental allowance) for households residing in welfare hotels, only the \$300 additional rental allowance is excluded as income because it exceeds the normal shelter cost component (\$200 in this example) and, therefore, is considered to be over and above the normal PA or GA grant.

However, Congress recently passed legislation that supercedes this policy, for a limited time, for particular households in temporary housing facilities. Section 807 of Pub. L. 100-77, amends section 5(k)(2) of the Food Stamp Act to provide an income exclusion for PA or GA housing assistance made to a third party on behalf of households residing in temporary housing facilities, if the temporary housing unit provided to the household as a result of such assistance lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption.

Using the example described above, under the provisions of Pub. L. 100-77 the normal shelter cost component of \$200 as well as the additional \$300 rental allowance would be excluded from income of the specific households covered by the statute.

Accordingly, this action amends 7 CFR 273.9(c)(1) to provide a specific income exclusion for a PA or GA housing assistance payment made on behalf of a household and paid by the

State or local government directly to a housing provider, for households residing in temporary housing, if the temporary housing unit provided for the household lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption.

In accordance with Pub. L. 100-77, this action also provides that the income exclusion under this provision shall expire September 30, 1989. This action also amends 7 CFR 273.9(c)(1)(iii)(B), which is redesignated by this action as 7 CFR 273.9(c)(1)(iv)(B), to conform that provision to the income exclusion policies discussed above set forth in § 273.9(c)(1)(i) of this action.

Additionally, this action amends 7 CFR 273.9(b)(2)(i) to conform that provision to the vendor payments provisions outlined in § 273.9(c) of this action when determining if a PA or GA vendor payment is considered as unearned income under 7 CFR 273.9(b)(2)(i).

Standard and Shelter Expense Deductions—Section 273.9(d) (7) and (8)

Food Stamp Program benefits are calculated on the basis of an individual household's net income. The lower the household's net income, the higher the food stamp benefit it may be entitled to receive. Section 5(e) of the Food Stamp Act of 1977, as amended, provides for certain deductions from household income.

Deductions serve to lower household net income. The standard deduction is available to all households. The excess shelter expense deduction is available to households with high shelter costs. There is a maximum amount for the excess shelter expense deductions, unless the household has an elderly or disabled member, in which case there is no maximum. The amounts of the standard and the excess shelter expense deductions are adjusted annually to take into account certain changes in the cost of living.

Pub. L. 100-77 made changes relating to the standard and excess shelter expense deductions. It changed the methodology for making annual adjustments in the standard deduction, changed the maximum amount of the excess shelter expense deduction, and changed the methodology for making annual adjustments in the maximum excess shelter expense deduction. In order to understand the rationale for the changes relating to the standard and excess shelter expense deductions, it is necessary to have a historical perspective relating to the method of adjusting these deductions.

When the Food Stamp Act of 1977 was enacted, adjustments in the level of the standard deduction were based on changes in the Consumer Price Index (CPI) for items other than food. Adjustments in the level of the excess shelter expense deduction were based on changes in the shelter, fuel, and utilities components of housing costs in the CPI. Both of these CPI measures (1. items other than food and 2. shelter, fuel, and utilities) incorporated the month-to-month changes in prices of five expenditures of owning a home, two of which, house prices and contracted mortgage interest costs, were based on the six percent of all families who actually purchased a home in the CPI base period. The prices used for houses and mortgage interest rates were "current" prices, which meant that those expenditure items overstated inflation after the 1977 Act was implemented because they were the most rapidly rising parts of the fixed market basket of goods and services upon which the CPI was based.

In order to correct the overstatement of inflation and base food stamp deduction adjustments on a methodology which related more closely to renters (the majority of food stamp households), Pub. L. 97-35, enacted August 13, 1981, made a change in the method of adjusting the standard and excess shelter expense deductions.

Under Pub. L. 97-35, the annual adjustment in the level of the standard deduction took into account changes in the Consumer Price Index for All Urban Consumers (CPI-U) for items other than (1) food, (2) homeownership (homeowners' costs), and (3) maintenance and repair component of shelter costs. The homeownership (homeowners' costs) and maintenance and repair components were also removed from the shelter component of the CPI-U when computing the annual adjustment in the excess shelter expense deduction, so that the excess shelter expense deduction was based on changes in the shelter (less homeownership (homeowners' costs) and maintenance and repair component of shelter costs), fuel, and utilities components of housing costs in the CPI-U.

It was originally thought that deleting the components of the CPI relating to homeownership from the market basket used to adjust the standard and excess shelter expense deductions would slow the upward trend in these deductions, result in smaller and more appropriate annual increases in the two deductions, and make them more reflective of the situation of renters. However, because

of changed circumstances, Congress felt that this understated the deductions for food stamp households. (*Congressional Record*, April 9, 1987, S 4941). Therefore, Pub. L. 100-77 will base the standard deduction adjustment on changes in the CPI-U for items other than food. It will base the maximum excess shelter expense deduction adjustment on changes in the shelter, fuel, and utilities components of housing costs in the CPI-U. Although this appears to be the same procedure as was used before Pub. L. 97-35 was enacted, it is not because the Bureau of Labor Statistics (BLS), which publishes the CPI-U, has recently changed their calculation of homeowners' costs to make them more reflective of renters by including a rental equivalence component and an owners' rent component.

Accordingly, this action amends 7 CFR 273.9(d)(7) to provide that the standard deduction shall be adjusted on October 1, 1987, and each October 1 thereafter, to reflect changes in the CPI-U for items other than food. This action also amends 7 CFR 273.9(d)(8) to provide that the excess shelter expense deduction shall be adjusted October 1, 1988 and each October 1 thereafter, to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI-U.

Additionally, Pub. L. 100-77 increased the maximum value of the excess shelter expense deduction. Accordingly, effective October 1, 1987, for all new applicants and recertifications, the new shelter deductions will be \$164 in the 48 States and DC, \$285 in Alaska, \$234 in Hawaii, \$199 in Guam, and \$121 in the Virgin Islands. These amounts will also be announced in a Notice published in the *Federal Register* when the October 1, 1987 adjustments in the allotments and standard deductions are announced. In accordance with the statute, the new deduction cap does not apply with respect to an allotment issued for a certification period beginning before October 1, 1987. Accordingly, the rule provides that the new shelter deduction limits shall be phased-in for households whose certification periods began before October 1, 1987. Such households shall receive the new deduction amounts when the household is recertified after October 1, 1987. Until they are phased-in, these households shall have their shelter deduction limit based on the procedure that was in effect under the Food Stamp Act prior to the enactment of Pub. L. 100-77. That statutory provision provides for a cost-of-living update to the shelter deduction limit to become effective on October 1, 1987. This update will occur. Thus, the

phased-in households will have an adjusted shelter deduction limit applied to them on October 1, 1987 and then have the new limit under Pub. L. 100-77 applied when they are recertified.

Loss-of-Benefits Penalty—Section 273.18

Section 805 of Pub. L. 100-77 amends section 5(e) of the Food Stamp Act to impose a new loss-of-benefits penalty on those food stamp recipients who fraudulently fail to report income. This provision is intended to ensure that food stamp recipients who deliberately fail to report earnings are not given the advantage of a deduction that is intended to encourage work.

Under current regulations at 7 CFR 273.18, food stamp recipients who fail to report earnings must repay the benefits received in excess of what would have been received had earnings been properly reported. The amount to be repaid is the difference between what the household received in benefits and what it would have received if it had reported its earnings correctly. In calculating the amount of overissuance owed, State agencies must apply the 20 percent earned income deduction to the unreported earnings.

The new statutory provision prohibits the earned income deduction from being applied to unreported earnings when the amount of food stamp benefits paid improperly because of fraudulent failure to report is calculated for collection. The amendment specifically states that the provision only applies to that portion of income which the household fails to report, not the entire amount of earned income. By doing this, the household that benefited from the fraudulent act is penalized since the amount it has to repay in overissuance will be increased. For example, if a food stamp household reports a monthly income of \$500 when it actually received \$600, the 20 percent earned income deduction would not be applied to the \$100 in unreported earnings when the State agency calculates the amount of overissued benefits.

Accordingly, this action amends 7 CFR 273.18(c)(2)(ii) to provide that when determining the amount of benefits a household should have received, for the purpose of calculating a claim against the household, the State agency shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report. (The statutory provision refers to willful or fraudulent failure to report; the Department interprets willful, or intentional, failure to report to be synonymous with fraudulent failure to

report.) However, when determining whether or not there is an error for quality control (QC) purposes, the earned income deduction should not be disregarded. This is because QC determines the accuracy in which State agencies have determined households eligible or ineligible for program participation. To disregard the earned income deduction for QC purposes would penalize the State agencies when the provision is only intended to penalize those households which intentionally violate the Program.

It is important to note that this provision only applies in cases where the recipient has been found, in accordance with the Act, to have intentionally failed to report earnings, thereby limiting its application to cases of proven rather than alleged fraud. The Department still encourages State agencies to process a claim against the suspect household as an inadvertent household error claim prior to the determination of intentional Program violation. The Department realizes that in cases where the household is found guilty, State agencies must refigure the amount of the claim. However, since there can sometimes be a significant lapse of time between the discovery of an overissuance and a finding of fraud the Department still believes that proceeding with the claim as an inadvertent household error claim is the best course of action.

Implementation—Section 272.1(g)

In accordance with Pub. L. 99-198 and Pub. L. 100-77, this action amends 7 CFR 272.1(g) to provide that the provisions of this action are effective, and must be implemented, as follows:

The provision which replaces the definition of "homeless food stamp household" with a definition of "homeless individual" is effective July 22, 1987. The definition is utilized for the expedited service provisions and the provisions governing disbursement of Program information to the homeless contained in this action. The definition is also used in conjunction with the current rules, promulgated to implement the Homeless Eligibility Clarification Act, governing the redemption of coupons by homeless food stamp households. The expedited service provisions and the provisions governing the disbursement of Program information to the homeless are effective at a significantly later date. The definition does not alter or change current provisions governing redemption of coupons by homeless individuals. Therefore, this action provides that State agencies immediately inform caseworkers of the new definition. No

other implementation efforts are required of the State agencies.

The provision which defines "General assistance", the provision which excludes PA/GA vendor payments from consideration as income if provided for medical, child care, or energy assistance, and the provision which excludes PA/GA vendor payments from income as emergency or special assistance are effective retroactively to April 1, 1987. The provision governing emergency or special assistance vendor payments and the provision which defines "General assistance" reflect longstanding Departmental policy and do not require implementation efforts by State agencies. State agencies must implement the other exclusions immediately in order to come into compliance with the statute. In the event that there are affected households, such households shall be entitled to restored benefits, if appropriate, back to the date of the household's application or April 1, 1987, whichever occurs later. For QC purposes only, QC reviewers shall not identify variances resulting solely from the inclusion or exclusion from income of medical, child care or energy assistance PA/GA vendor payments in cases with review dates between April 1, 1987 and October 31, 1987.

The provision which grants an income exclusion for vendor payments made by State or local governments to welfare hotels and similar facilities is effective and shall be implemented for new applicant households for the period beginning October 20, 1987 and ending September 30, 1989. By law, this provision does not apply to allotments issued to any household for any month beginning before the effective date of the provision. Therefore, this action provides that State agencies convert their affected current caseload to this provision, if otherwise eligible, at household recertification, when the household requests a review of its case, or when the State agency otherwise becomes aware that a review needed, but not prior to October 20, 1987.

The provisions which allow State agencies to provide and obtain Federal reimbursement for Program informational activities aimed at the homeless are effective July 22, 1987.

The provision which allows separate household status to be granted to certain individuals living with their parent(s) or sibling(s) and the conforming provision which requires such households to be assigned a certification period that does not exceed six months is effective and must be implemented on October 1, 1987. New applicant households which apply for benefits on or after October 1,

1987 may be granted separate household status under this provision. Current participants which may be eligible for separate household status under this provision may be granted separate status, but not prior to October 1, 1987, if the household requests separate status and the State agency determines that the household meets the requirements of this provision.

In accordance with Pub. L. 100-77, the Department has the discretion to establish the effective date of the provision which extends the current expedited service procedures to two additional categories of households. By law, the effective date cannot be later than 160 days after enactment of Pub. L. 100-77. This action provides that this provision is effective and shall be implemented for applicant households on December 1, 1987.

The provision which changes the effective date for annual cost-of-living adjustments to the income eligibility limits from July 1 to October 1 each year is effective July 1, 1988. Thus, the income eligibility limits that were placed into effect on July 1, 1987 will remain in effect until October 1, 1988. Annual adjustments to the income eligibility limits will now be on the same schedule with the annual cost-of-living adjustments for the Thrifty Food Plan and deductions.

The provision which changes the methodology for making annual cost-of-living adjustments to the standard deduction is effective October 1, 1987. The provision which changes the methodology for making annual cost-of-living adjustments to the excess shelter expense deduction is effective October 1, 1988.

The provision which establishes new amounts for the maximum excess shelter expense deduction is effective October 1, 1987. State agencies shall apply the new deduction limit to all households which apply for benefits on or after October 1, 1987. However, in accordance with the statute, the new deduction limits are not to be applied to participating households whose certification period began prior to October 1, 1987. Rather, these households are to be phased-in to the new limits as they are recertified. Until they are phased-in, these households shall have the shelter deduction limit applied to them that was in effect under the Food Stamp Act prior to the enactment of Pub. L. 100-77. That statutory provision provides for a cost-of-living update to the shelter deduction limit to become effective on October 1, 1987. This update will occur. Thus, the phased-in households will have an

adjusted shelter deduction limit applied to them on October 1, 1987 and then have the new limits under Pub. L. 100-77 applied when they are recertified.

The statute requires that the provision which imposes an earned income deduction penalty when calculating fraud claims take effect September 5, 1987. It is important to note that the date an allotment is issued is not the determining factor as to the implementation of this provision. Rather, the determining factor is the month for which benefits are issued. The statute specifies that the provision not apply to any allotments issued for months beginning before the effective date. Therefore, this rule requires State agencies to apply the provision to all allotments reflecting overissuances resulting from the international failure to report earned income issued for the month immediately following the month in which the effective date of the provision falls. For most State agencies, those that issue on a calendar month basis, this means the provision is to be applied to the allotments issued for October 1987 and all allotments issued for subsequent months. Thus, as noted above, State agencies that issue on a calendar month basis must implement this provision for allotments issued for October, even if the issuance occurs in September. Likewise, issuance made in October for September or earlier months must not have the provision applied to them. State agencies that issue on other than a calendar month basis will need to determine which issuance month begins immediately after September 5, 1987 and apply the provision to issuances for that month. The same principles noted above for calendar month systems would apply to these systems.

This action further provides that State agencies must implement the provisions of Pub. L. 100-77 as outlined in this action on the specific dates required for each provision. If, for any reason, the State agency fails to implement the provisions on the date required, affected households, if appropriate, shall be entitled to restored benefits back to the date of application or the effective date of the provisions involved, whichever occurs later.

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, Grant programs-social programs,

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 277

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

Accordingly, Parts 271, 272, 273, and 277 are amended as follows:

1. The authority citation for Parts 271, 272, 273 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, *Definitions*, the definition of "General assistance" is revised, the definition of "Homeless food stamp household" is removed, and a new definition for "Homeless individual" is added.

The revision and addition read as follows:

§ 271.2 Definitions.

"General assistance (GA)" means cash or another form of assistance, excluding in-kind assistance, financed by State or local funds as part of a program which provides assistance to cover living expenses or other basic needs intended to promote the health or well-being of recipients.

"Homeless individual" means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- (1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- (2) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;
- (3) A temporary accommodation in the residence of another individual; or
- (4) A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(93) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * *

(93) *Amendment No. 298.* The provisions of Amendment No. 298 are effective, and shall be implemented, as follows:

(i) The provision in § 271.2 of this amendment which defines "General assistance" and the provisions contained in § 273.9(b)(2)(i), § 273.9(c)(1)(ii)(A), (c)(1)(ii)(B), and (c)(1)(ii)(C), regarding exclusion of certain PA/GA vendor payments are effective retroactively to April 1, 1987. The provision in § 273.9(c)(1)(iv)(B), exclusion of emergency/special PA/GA vendor payments, is also effective retroactive to April 1, 1987, however, this provision reflects current policy and requires no implementation efforts by State agencies. State agencies shall immediately implement the other provisions listed above. Affected households shall be entitled to restored benefits back to the date of application or April 1, 1987, whichever occurred later. For QC purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of these provisions in cases with review dates between April 1, 1987 and October 31, 1987.

(ii) The technical amendment to Part 277 is effective September 29, 1987, and does not require implementation efforts by State agencies. The remaining provisions of Amendment No. 298 are effective, and must be implemented, as follows:

(A) Section 271.2, definition of "Homeless individual," effective July 22, 1987. State agencies shall immediately inform caseworkers of the new definition. No other implementation efforts are required to the State agencies.

(B) Section 273.9(c)(1)(ii)(D), the income exclusion of certain PA/GA vendor payments, is effective and shall be implemented for new applicant households which apply for benefits during the period beginning October 20, 1987 and ending September 30, 1989. This provision does not apply to allotments issued to any household for any month beginning before the effective period of the provision. State agencies shall convert their affected current caseload to this provision, if otherwise eligible, at recertification,

when the household requests a review of its case, or when the State agency otherwise becomes aware that a review is needed but not prior to October 20, 1987.

(C) Section 272.5, the financial reimbursement for Program informational activities for the homeless, is effective July 22, 1987.

(D) Section 273.1(a)(2)(i)(C), § 273.1(a)(2)(i)(D), § 273.10(f)(2), the exception to certain household composition requirements, and the rule regarding recertification of households subject to the exception, are effective and must be implemented on October 1, 1987. Households which apply for benefits on or after October 1, 1987 may be granted separate household status under this provision. Current participants which may be eligible for separate household status under this provision, may be granted separate status, but not prior to October 1, 1987, if the household requests separate status and the State agency determines that the household meets the requirements of this provision.

(E) Section 273.2(i), the expansion of expedited service, is effective, and must be implemented, for affected households applying for Program benefits on or after December 1, 1987.

(F) Section 273.9(a)(3), regarding the date of making the annual adjustment to the income standards, is effective with the 1988 annual adjustment. The July 1, 1987 income limits will remain in effect until October 1, 1988.

(G) The first three sentences of § 273.9(d)(8)(i), the raising of the shelter deduction limit for the 48 States and DC., Alaska, Hawaii, Guam and Virgin Islands, are effective October 1, 1987. State agencies shall implement the higher deduction limits appearing in the first sentence of § 273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin on or after October 1, 1987. State agencies shall implement the lower deduction limits appearing in the second sentence of § 273.9(d)(8)(i) on October 1, 1987 only for households whose certification periods begin before October 1, 1987. The State agency shall implement the higher deduction limits for households whose certification periods begin before October 1, 1987 beginning with the month in which such household is recertified after October 1, 1987.

(H) Section 273.9(d)(7)(i), the change in the standard deduction methodology, is effective October 1, 1987.

(I) The last sentence of § 273.9(d)(8)(i), the change in the excess shelter deduction methodology, is effective, October 1, 1988.

(J) Section 273.18(c)(2)(ii), the earned income deduction penalty, is effective on September 5, 1987. State agencies which issue on a calendar month basis, shall apply this provision to allotments issued for October 1987 and all allotments for subsequent months. State agencies which issue on other than a calendar month basis shall apply the provision to the issuance for the first issuance month beginning after September 5, 1987.

(iii) State agencies must implement the provisions as outlined in paragraph (g)(93)(ii) of this section on the specific dates required for each provision. If, for any reason, the State agency fails to implement the provisions on the required date, affected households, if appropriate, shall be entitled to restored benefits back to the date of application or the effective date of the provision involved, whichever occurred later.

4. In § 272.5: a. Paragraph (a) is amended by removing the words "to applicant and recipient households".

b. Introductory paragraph (b) is amended by adding before the period appearing at the end of the paragraph, the words "for applicants and recipients".

c. A new paragraph (c) is added. The addition reads as follows.

§ 272.5 Program informational activities.

(c) *Program information for the homeless.* State agencies, at their option, may carry out Program informational activities directed toward homeless individuals. When providing Program information such as this, only those efforts specifically directed toward homeless individuals, as defined in § 271.2, will be funded by FNS in accordance with Part 277. State agencies shall inform FNS in writing what they will do to ensure that Program information is directed only toward individuals who are actually homeless.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.1: a. Paragraph (a)(2)(i)(C) is amended by adding a new sentence to the end of paragraph (a)(2)(i)(C).

b. Paragraph (a)(2)(i)(D) is amended by adding a new sentence to the end of paragraph (a)(2)(i)(D).

The additions read as follows:

§ 273.1 Household concept.

(a) *Household definition.* * * *

(2) *Special definition.*

(i) * * *

(C) * * * If the natural, adopted or stepchild is a parent of minor children and he/she and the children are living with his/her parent(s), the parent of the

minor children, together with such children, may be granted separate household status 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 and the certification period as required by § 273.10(f)(2).

(D) * * * If a sibling is the parent of minor children and he/she and the children are living with his/her sibling, the sibling who is the parent of the minor children, together with such children, may be granted separate household status 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 and the certification period as required by § 273.10(f)(2).

6. In § 273.2, paragraph (i)(1) is revised in its entirety to read as follows:

§ 273.2 Application processing.

(i) *Expedited service.*—(1) *Entitlement to expedited service.* The following households are entitled to expedited service:

(i) Households with less than \$150 in monthly gross income, as computed in § 273.10 provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed \$100;

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3) provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed \$100;

(iii) Eligible households in which all members are "homeless individuals" as defined in § 271.2; or

(iv) Eligible households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage, and utilities.

7. In § 273.9: a. Introductory paragraph (a)(3) is revised.

b. The first sentence of paragraph (b)(2)(i) is revised and a new sentence is added after the first sentence.

c. Paragraphs (c)(1)(ii), (c)(1)(iii) and (c)(1)(iv) are redesignated as paragraphs (c)(1)(iii), (c)(1)(iv) and (c)(1)(v), respectively and a new paragraph (c)(1)(ii) is added.

d. Newly redesignated paragraph (c)(1)(iv)(B) is revised in its entirety.

e. Paragraphs (d)(7)(i) and (d)(8)(i) are revised.

The revisions and addition read as follows:

§ 273.9 Income and deductions.

(a) *Income eligibility standards.*

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(b) *Definition of income.*

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section.

(c) *Income exclusions.*

(ii) A PA or GA payment which is not made directly to the household, but paid to a third party on behalf of the household to pay a household expense, shall be considered an excludable vendor payment and not counted as income to the household if such PA or GA payment is for:

- (A) Medical assistance;
- (B) Child care assistance;
- (C) Energy assistance (as defined in paragraph (c)(11) of this section); or
- (D) Housing assistance payments made to a third party on behalf of a household residing in temporary housing, if the temporary housing unit provided for the household as a result of such assistance lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption, provided that such vendor payments shall be excluded under this provision if paid to the housing provider during the period beginning October 20, 1987 and ending September 30, 1989.

(iv)

(B) All or part of a public assistance (PA) or general assistance (GA) grant or payment which is diverted to a third party or to a protective payee for purposes such as, but not limited to, managing a household's expenses, shall

be considered income to the household and not excluded as a vendor payment, except as provided for in paragraphs (c)(1)(i) and (c)(1)(ii) of this section. Assistance financed by State or local funds which is provided over and above the normal PA or GA grant or payment, or is not normally provided as part of such grant or payment would be considered emergency or special assistance and excluded as income if provided to a third party on behalf of the household. For example, where a PA or GA program provides all households with school age children with a monthly "extra" childrens clothing allowance, paid directly to a clothing store, that allowance would not be excluded because it is part of the regular monthly assistance for all households in that category and is not really an "extra" payment. On the other hand, if a fire destroyed the household's clothing and it receives an "emergency" amount paid directly to a clothing store, such a payment could be excluded under this provision. Where the program is not composed of various standards, allowances, or components, but is simply designed to provide assistance on an as needed basis rather than provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision. For example, if such a program provides a household with a food voucher to be presented to a store, the value of the voucher is not excluded as emergency or special assistance because it is not provided over and above the normal grant, it is the normal grant. If it is not clear that a certain type of PA or GA vendor payment is covered under this general exclusion policy, the State agency shall apply to the appropriate FNS Regional Office for a determination of whether PA or GA vendor payments that the State believes are provided for emergency or special circumstances should be excluded. The application for this exclusion determination must explain: the emergency and special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA or GA scheme. A copy of the rules, ordinances or statutes which creates and authorizes the program shall accompany the application request.

(d) *Income deductions.*

(7) *Adjustment of standard deduction.*

(i) Effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI-U for items other than

food for the twelve months ending the preceding June 30.

(8) *Adjustment of shelter deduction.*

(i) Effective October 1, 1987, for households whose certification period begins on or after October 1, 1987, the maximum monthly excess shelter expense deduction limits shall be \$164 for the 48 States and D.C., \$285 for Alaska, \$234 for Hawaii, \$199 for Guam, and \$121 for the Virgin Islands. Effective October 1, 1987, for households whose certification period began before October 1, 1987, the maximum monthly excess shelter deduction limits shall be \$152 for the 48 States and D.C., \$261 for Alaska, \$217 for Hawaii, \$185 for Guam, and \$112 for the Virgin Islands. Households whose certification period began before October 1, 1987 shall receive the higher deduction limits stated in this paragraph beginning with the first month of the certification period for which such households are recertified after October 1, 1987. Effective October 1, 1988, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI-U for the twelve months ending the preceding June 30.

8. In § 273.10, paragraphs (f)(2) through (f)(7) are redesignated as paragraphs (f)(3) through (f)(8), respectively, and a new paragraph (f)(2) is added to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(f) *Certification periods.*

(2) Households which are granted separate household status, in accordance with § 273.1(a)(2)(C) and (D), because the household consists of an individual and that individual's minor child(ren) living with the individual's parent or sibling and purchasing and preparing meals separate from the parent/sibling shall be assigned a certification period not to exceed six months.

9. In § 273.18, paragraph (c)(2)(ii) is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 273.18 Claims against households.

(c) *Calculating the amount of claims.*

(2)

(ii) * * * When determining the amount of benefits the household should have received, the State agency shall not apply the 20 percent earned income deduction to that portion of earned income which the household intentionally failed to report.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Appendix A—Amended

10. In Appendix A, under section entitled *Standards for Selected Items of Costs*, paragraph C. (14) is amended by replacing the reference to "§ 272.6" with a reference to "§ 272.5".

Anna Kondratas,

Administrator, Food and Nutrition Service.

Date: September 24, 1987.

[FR Doc. 87-22359 Filed 9-28-87; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 14; Doc. No. 4751S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by re-defining the insurance period for all insured crops to provide that insurance attaches on the later of when the crop is planted or when the application is properly completed, signed and delivered to the service office in addition to the other attachment references therein. The intended effect of this rule is to prevent the possibility of adverse selectivity resulting in an automatic replant payment. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective date:* September 29, 1987. Comments may be submitted until November 30, 1987.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends 7 CFR Part 401—General Crop Insurance Regulations, effective for the 1988 and succeeding crop years to provide that, in addition to the other insurance period references therein, insurance attaches on the later of when the crop is planted or when the application is signed.

Present provisions contained in section 7 of the general crop insurance policy published in the *Federal Register* on Thursday, July 30, 1987 at 52 FR 28443, provide only that insurance attaches on each unit, or part of a unit, when the insured crop is planted or on the calendar date for the beginning of

the insurance period if specified in the crop endorsement.

FCIC has identified several states where insurable crops (primarily corn and grain sorghum) are planted as much as 6 weeks in advance of the sales closing date for the area for such crops. After damage occurs, a non-insured determining that the planted crop will not reach production, may buy crop insurance and collect an automatic replant payment. Such adverse selection is counter to the principles of an actuarially sound insurance program and provides an opportunity for fraudulently obtaining crop insurance coverage.

FCIC has determined that it is necessary to amend the insurance period provisions in the general crop insurance policy to prevent such occurrences.

This amendment has no effect on any other provision of the general crop insurance policy.

While this amendment is not considered an emergency rule, the far reaching effect of this provision allowing a producer to plant several weeks in advance of the sales closing date, then just prior to the closing date to purchase insurance virtually guaranteeing a replant payment payment, requires an immediate change in this provision in order to protect the integrity of the crop insurance program.

Therefore, FCIC has determined that it good cause is shown to make this rule effective upon publication in the *Federal Register* and to allow 60 days following publication for the public to submit written comments, data, and opinions on the rule.

This rule will be scheduled for review so that any amendment made necessary by public comment may be published as quickly as possible following the public comment period.

Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written comments received in connection with this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations.