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(b) Licensees or their contractors may use only HHS-certified laboratories that agree to follow the same rigorous chemical testing, quality control, and chain-of-custody procedures when testing for more stringent cut-off levels as may be specified by licensees for the classes of drugs identified in this Part, for analysis of blood specimens for alcohol, and for any other substances included in licensees' drug panels.

Dated at Rockville, MD this 24th day of May, 1989.

For The Nuclear Regulatory Commission.
John C. Hoyle,

Acting Secretary of the Commission.
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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 271 et al.

**Food Stamp Program; Final Rule and
Interim Rule**

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 314]

Food Stamp Program; Categorical Eligibility for Certain Public Assistance and Supplemental Security Income (SSI) Recipients

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking puts in final form Food Stamp Program interim regulations published August 5, 1986 which implemented the categorical eligibility provision contained in section 1507 of the Food Security Act of 1985 (Pub. L. 99-198; December 23, 1985). That provision mandates that households that only contain members who are recipients of public assistance (PA) or supplemental security income (SSI) benefits be categorically eligible for food stamp benefits.

This final action also addresses a provision of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988) which eliminates the September 30, 1989 expiration date for testing categorical eligibility under the Food Security Act of 1985.

DATES: The new provisions contained in this final action at § 272.1(g)(109), § 273.2(j)(1)(iv), § 273.2(j)(2)(iii)(B), § 273.17 and § 273.18 are effective July 7, 1989 to be implemented no later than September 1, 1989. All the remaining provisions, which specifically adopt, as final, interim provisions as published at 51 FR 28200-28202, August 5, 1986 or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Certification Policy Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, VA. 22302, telephone (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture'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 and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition or 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), 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). G. Scott Dunn, Acting 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 and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program. Potential and current participants will be affected because of changes to various program policies and procedures.

Paperwork Reduction Act

The provision at 7 CFR 273.10(g)(1)(ii) requiring the State agency to tell households to inform the State agency of their eligibility for PA or SSI benefits on form FNS-442, Action Taken on Your Food Stamp Case, does not alter or change burden estimates for the FNS-442 as approved under OMB No. 0584-0064. The remaining provisions of this rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Comments

On August 5, 1986, the Department issued an interim rule at 51 FR 28196 which implemented the Food Security Act of 1985 provision on categorical eligibility for certain PA and SSI households. A total of 15 comment letters were received on the interim rule—the majority from State agencies. All comments received were reviewed but only those issues that either arose repeatedly or those which can be

addressed by regulation are discussed in detail. Comments which proposed legislative changes or were unclear or not pertinent are not addressed in this preamble. A full explanation of the rationale of the rule is contained in the preamble of the interim rule. It is suggested that persons also refer to that rule for background information.

Reactivation of Denied Cases—
§ 273.2(j)(1)(iv)

The interim rule established a procedure which required the State agency to reevaluate any application from a household with applied for both food stamps and Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) but which was denied food stamps prior to action being taken on the AFDC or SSI application. The reevaluation would be done when the household was found to be eligible for or authorized for receipt of AFDC or SSI benefits and thus categorically eligible. The interim rule provided that the State agency shall not reinterview the household but shall use available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application resigned and dated by the authorized household member or procedure. In general, commenters preferred an outright denial and reapplication and, at the very least, wanted more flexibility in contacting the household to update information on the original application. One commenter was concerned that State agencies are not required to contact the household and, thus, the household may not be actively involved in the reevaluation process.

Because the Department considers that categorical eligibility begins at the point when the person or assistance unit becomes eligible for receipt of PA or SSI benefits, or becomes authorized for receipt of PA or SSI benefits, this final action retains the provision requiring reactivating a denied food stamp case which is later determined categorically eligible. However, to ensure that the household has an opportunity to participate in the reevaluation process and that the State agency has the latest information, this final action amends 7 CFR 273.2(j)(1) to require State agencies to first use available information to update the application and then contact the household to explain and confirm changes and determine if any other changes in circumstances have occurred. The final rule still requires

that the household initial changes and re-sign and date the application, *unless* the household does not supply new information or information supplied by the household does not deviate from the available information obtained by the State agency.

The interim rule provided that if AFDC or SSI eligibility is not determined within 30 days after the date the food stamp application is filed and the household is not eligible as a nonpublic assistance (NPA) household, the application shall be denied on the 30th day and reactivated when the AFDC/SSI eligibility determination is made. One commenter suggested that the application be pending on the 30th day in lieu of denial and reactivation. This suggestion is not adopted. The Food Stamp Act requires that a decision on food stamp eligibility be made within 30 days of the date the application is filed and the Department cannot justify keeping a case pending beyond 30 days when the household is ineligible for food stamps.

This same commenter suggested that categorical eligibility be effective on the same date AFDC/SSI is effective. The commenter explained her concern through the use of a case example: An AFDC application was filed October 6, 1986. Because the State agency opted to make AFDC effective the first of the month in which the 30th day after the date of the AFDC application falls, AFDC became effective November 1, 1986. The interim rules provide that any household determined PA eligible which is categorically eligible within the 30-day food stamp processing time shall be provided food stamp benefits back to the date of the food stamp application. The commenter pointed out that the household in the example will be considered categorically eligible effective for a period of time for which the household was not eligible for AFDC.

It is not clear from the commenter's example if the household was determined to actually be *ineligible* for PA for the period October 6 through October 31 and, thus, not entitled to receive PA benefits for that period or if the household was determined to be *eligible* for PA but the State agency opted, for various administrative reasons, not to provide PA benefits for October 6 through October 31 but rather to begin delivery of PA benefits on an ongoing basis in November, or opted to provide October benefits along with the subsequent full month's benefits for November. It was never the intent of the Department to extend categorical eligibility for food stamp benefits to a

person or assistance unit which is actually determined *ineligible* for PA for a given month and, thus, not entitled to PA benefits. The Department's concern, with regard to the interim provision at 7 CFR 273.2(j)(1)(iv), was that the effective date of categorical eligibility for a given household not be delayed simply because of when the State agency opts to begin the delivery of PA benefits to an eligible PA applicant. The date used by a State agency as the date on which an eligible PA applicant will actually begin to receive PA benefits can vary.

Using the commenter's example case, if the State agency determined *in* October that the person or assistance unit is an eligible PA applicant but opted, for some administrative reason, not to begin delivery of any PA benefits until November, it is the Department's intent that the household be considered categorically eligible for food stamps and receive food stamp benefits for October back to the date of the food stamp application (assuming the household applied for food stamps in October). It is the Department's opinion that such household is "authorized" to receive PA in October and should be considered a PA recipient for categorical eligibility purposes. On the other hand, if the State agency determined *in* October that the person or assistance unit is an ineligible PA applicant for the period October 6 through October 31 but PA-eligible for a period *beginning* November 1 and the end of the 30-day food stamp processing time, it is the Department's intent that the household be considered categorically eligible for food stamps beginning in November and receive food stamp benefits for the entire month of November.

Therefore, this final action retains the statement at 7 CFR 273.2(j)(1)(iv) which provides that any household determined PA eligible which is categorically eligible within the food stamp 30-day processing time shall be provided food stamp benefits back to the date of the food stamp application. However, to ensure uniform treatment and avoid misapplication of the effective date of categorical eligibility, this final action adds a clarifying statement to the provision which provides that in no event shall food stamps be back paid under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any PA benefits for that month, unless the household is eligible for food stamp benefits as an NPA case.

Disqualified/Ineligible Person— § 273.2(j)(2)(ii)

The interim rules provided that under no circumstances shall any household be considered categorically eligible if *any member* of the household is disqualified for an intentional Program violation, failure to comply with monthly reporting requirements, or failure to comply with work requirements (in accordance with 7 CFR 273.7). At the time the interim rules were published, 7 CFR 273.7 provided that if any member of a household failed to comply with the work requirements of 7 CFR 273.7, the entire household would be disqualified from the Program. The August 5 interim rules governing categorical eligibility were consistent with this policy. However, a subsequent rule published at 51 FR 47378, December 31, 1986, amended 7 CFR 273.7 to provide that the entire household would be disqualified only if the head of the household failed to comply with the work requirements of 7 CFR 273.7. If another member failed to comply, only that member is disqualified. Therefore, as noted by a commenter, the categorical eligibility rules need to be revised to clarify how to handle both types of disqualification situations. Therefore, this final action amends 7 CFR 273.2(j)(2) to clarify that households disqualified because the "head of the household" failed to comply with the work requirements of 7 CFR 273.7 shall not be considered categorically eligible. Households which contain a member, other than the head of the household, who is disqualified because of a failure to comply with the requirements of 7 CFR 273.7, could be considered categorically eligible, if the household is otherwise eligible for food stamp benefits. This policy for handling categorical eligibility for households which contain a member, other than the head of the household, who fails to comply with 7 CFR 273.7 is consistent with the provision governing categorical eligibility of households which contain other types of ineligible members; i.e. an ineligible alien, an ineligible student, an SSI recipient in a cash-out State, or persons institutionalized in a nonexempt facility.

A question was asked on how to handle households disqualified for failure to comply with workfare. In accordance with rules published December 31, 1986, workfare can be a component of a State agency's Employment and Training (E&T) program. A State agency's E&T program is established in accordance with 7 CFR 273.7. Thus, failure to comply with

workfare as an E&T component is subject to the disqualification provisions of 7 CFR 273.7. Handling categorical eligibility for households or individuals disqualified under 7 CFR 273.7 is explained in more detail in the previous paragraph.

Where workfare is not a component of a State agency's E&T program, disqualification for failure to comply is subject to the disqualification provisions of 7 CFR 273.22. In accordance with 7 CFR 273.22, the entire household is disqualified if any member fails to comply with workfare. It is Congress' intent that households disqualified due to a violation of food stamp rules not be reinstated due to categorical eligibility. (H.R. Rpt. No. 99-447, 99th Cong., 1st Sess., Dec. 17, 1985, p. 521.) Thus, households disqualified in accordance with 7 CFR 273.22 cannot be considered categorically eligible. Accordingly, this final action amends 7 CFR 273.2(j)(2) to specifically prohibit households in accordance with 7 CFR 273.22 from being considered categorically eligible.

Another commenter asked that the statement contained in the preamble of the August 5 interim rule which clarifies Congressional intent that a household disqualified for Program violations cannot be reinstated to the Food Stamp Program because of categorical eligibility be included in the regulatory language. The Department adopted this suggestion and this final action amends 7 CFR 273.2(j)(2) accordingly.

Current rules at 7 CFR 273.11(c)(3) provide that whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining members based, as much as possible, on information in the case file. One commenter suggested that a reference to this policy be included in the rules to clarify that the provision applies for households that must be reevaluated because one of its members was disqualified for an intentional Program violation. The interim rules provide that households not entitled to categorical eligibility because of the Program's disqualification provisions are subject to all food stamp eligibility and benefit provisions and this would include all the provisions of 7 CFR 273.11(c). However, the Department agrees that a reference to the provisions of 7 CFR 273.11(c) would clarify this policy. Therefore, this final action amends 7 CFR 273.2(j)(2) to require, by regulatory reference, that State agencies apply all the provisions of 7 CFR 273.11(c) when determining the eligibility or ineligibility of remaining

household members when a member of the household is disqualified or otherwise considered ineligible to participate in the Program.

Suspension for Cases Entitled to Zero Benefits—§ 273.2(j)(2)(v)(F)

Several comments were received on the interim rule's procedures to suspend a case which is categorically eligible but the household's income is such that it is not entitled to food stamp benefits ("zero benefit" cases). The interim rule required that the case not be denied but that it be held in suspension in accordance with 7 CFR 273.10(e)(2)(iii)(A) to monitor if the household becomes entitled to benefits at any time during the certification period. Commenters preferred to give State agencies an option to deny rather than suspend such cases in accordance with 7 CFR 273.10(e)(2)(iii)(A). In the latter case, the household would reapply if its circumstances change so that it becomes entitled to benefits. State agencies have indicated that suspension of these cases is an administrative burden requiring extensive system changes, especially for computerized systems. The State agencies project that only a minimal number of households would be entitled to "zero benefits" and that the majority of those households would not become entitled to benefits within the certification period. Also, State agencies believe that the large majority of these households would always be ineligible for "zero" benefits. Further, these households could reapply at any time their circumstances change to become eligible.

This final action retains the interim provision. The Department cannot adopt this suggestion because categorical eligibility is determined based on a household's status as a PA/SSI recipient. The provision at 7 CFR 273.10(e)(2)(iii)(A) applies to households determined eligible based on the Program's gross and/or net income tests and whose net income exceeds the level at which benefits are issued. Categorically eligible households, by statute, cannot be subject to an income test for food stamp eligibility. To deny such households based on the fact that their net income exceeds the level at which benefits are applied would indirectly result in denial of eligibility based on a type of income test.

Restored Benefits—§ 273.2(j)(1)(iv)

The interim rule provided that denied households which later become categorically eligible are entitled to restored benefits from the beginning of the period for which PA or SSI benefits are paid, the original food stamp

application date, or December 23, 1985, whichever is later. The interim rule also provided that benefits be restored in accordance with 7 CFR 273.17.

Two commenters asked that the rule clarify whether or not the 12-month limit for restoring benefits under 7 CFR 273.17 applies to denied households which later become categorically eligible. Because the statute mandated that the categorical eligibility provision of the law was effective on December 23, 1985, restored benefits would be required to be paid back to that date for some households and the period of restoration could be longer than 12 months. Thus, the 12-month limit under the provisions of 7 CFR 273.17 cannot be applied and this final action amends 7 CFR 273.17 to clarify this matter for categorical eligibility purposes and other such legislative action which results in a restoration period of more than 12 months.

Income Deduction—§ 273.10(d)(7)

The interim rule provided that individuals entitled to the excess medical deduction at 7 CFR 273.9(d)(3) and the uncapped excess shelter expenses deduction at 7 CFR 273.9(d)(5), shall receive these two income deductions, if they incur such expenses, for the period for which SSI benefits are authorized to be paid, or from the date of the food stamp application, whichever is later as discussed in § 273.2(j) of the interim rule. The interim rule also provided that individuals entitled to restored benefits, in accordance with § 273.2(j)(1)(iv) of the interim rule, shall receive restored benefits using the medical and shelter expense deductions, if they incur such expenses. One commenter questioned whether households containing newly entitled SSI recipients but which do not meet the categorical eligibility criteria would be entitled to the medical and excess shelter expense deductions for the period for which the SSI recipient is authorized to receive SSI benefits.

All of the provisions of the interim rule are intended to change normal procedures for determining food stamp eligibility and benefit levels for categorically eligible households. Households which are not considered categorically eligible are subject to the normal food stamp eligibility and benefit level determination procedures, including the procedures for handling the medical and excess shelter expense deductions under 7 CFR 273.9(d)(3) and (d)(5). The Department believes that the commenter was misled and confused because the regulatory language of § 273.10(d)(7) of the interim rule used the

term "individuals" instead of "households" and the rule addressed the relationship of the provisions for categorically eligible households through regulatory reference to § 273.2(j) of the interim rule.

The preamble of the interim rule discussed the Department's intent that the procedures for handling the medical and excess shelter expense deductions for households denied as NPA households which later become categorically eligible, be consistent with the timeframes and procedures for paying benefits to households determined categorically eligible within the 30-day food stamp processing standard. The preamble also noted that the Department needed to address how to handle the medical and shelter expense deductions for households determined eligible as NPA households which later become categorically eligible.

In light of the commenter's confusion and possible misapplication of the provision, this final action amends 7 CFR 273.10(d)(7) to be more specific and clarify Departmental intent. This final action provides that a household which contains an SSI recipient that is determined, within the 30-day processing standard, to be categorically eligible, or eligible as an NPA household and later becomes categorically eligible, shall receive the medical and shelter deductions as discussed in 7 CFR 273.9(d)(3) and (d)(5), if it incurs such expenses, for the period for which SSI benefits are authorized to be received, or from the date of the food stamp application, whichever is later. A household, containing an SSI recipient, which is determined ineligible as an NPA household and later becomes categorically eligible, shall receive the medical and excess shelter expense deductions, if they incur such expenses, for the period for which restored benefits are to be paid in accordance with 7 CFR 273.2(j)(1)(iv); i.e., from the beginning of the period for which SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later.

Claims—§ 273.18

Some commenters wanted the Department to clarify how claims would be handled in the event a categorically eligible household was subsequently found to be ineligible for PA or SSI at the time they had received it. The preamble to the interim rule had stated that the food stamp claims recovery rules applied to categorically eligible households. However, it was not clear in the interim rule how claims would be treated for categorically eligible

households. For example, a household receiving PA might be subsequently determined ineligible for PA. The questions are whether a food stamp claim should be filed against such a household for the time when it was improperly receiving PA and if so, how would the amount of the claim be determined. The interim rule did not offer guidance, although it stated that there would not be a quality control variance if all members of the household actually received PA or SSI.

The Department carefully considered the issue of how claims should be treated in cases of categorical eligibility and is offering the following clarification. For claims purposes, categorical eligibility cannot be rescinded retroactively. As long as everyone in the household received PA or SSI during a given time, it would be considered to have been properly eligible for food stamps for claims purposes even if its PA or SSI eligibility was subsequently determined improper. This is consistent with the statute where the intent is that certain households would be determined eligible for food stamps not on the basis of factors such as income and assets but on the basis of receipt of PA or SSI. The Act does not specify that this eligibility would be considered provisional until such time as the PA or SSI eligibility was thoroughly validated. Therefore, the determination that the household was eligible for food stamps would be considered "accurate" so long as each member of the household had received PA or SSI. (Of course, once the State agency is aware that the household should not be receiving food stamps because it is no longer receiving PA or SSI, the State agency must take action to ensure that the household does not continue to receive food stamps.)

Although categorical eligibility cannot be rescinded retroactively, a claim to correct an improper benefit level can be established against a categorically eligible household whose PA or SSI eligibility is subsequently determined improper if the reason for the subsequent PA or SSI ineligibility was additional household income or changes in household size and/or deductions which directly affect the calculation of the food stamp benefit amount. A claim could not be established if the reason the household was subsequently declared ineligible for PA or SSI related to excess household resources.

Food stamp benefits are based on the difference between the maximum allotment for the household's size and 30 percent of the household's net income. This is true for categorically eligible

households and for noncategorically eligible households alike. Thus, claims could be collected from a categorically eligible household if the household's net income had changed. For example, if a four-person household was originally recorded as having \$1,100 earnings, they might be entitled to \$250 PA. Thus, their gross income was \$1,350, which was above the gross income limits, and they would not have received food stamps if it were not for categorical eligibility. After adding together their earned and PA income and after taking into account their deductions, the household would have had \$696 net income and would have been entitled to an allotment of \$91. If it was determined that the household had \$200 earnings that had been previously overlooked, the \$200 would be added to all of their other income, and their gross income would be \$1,550 for food stamp purposes. Based upon the income and deductions actually available to the household, the household should have received an allotment of \$43. Subtracting this amount from the actual issuance of \$91 the household would owe a claim of \$48. Thus, a claim could be calculated for a categorically eligible household if the reason for a household's subsequent ineligibility for PA or SSI related to the discovery of additional income. A claim could not be calculated (and therefore established) if the reason the household was subsequently declared ineligible for PA related to excess household resources.

In some cases, the additional gross income would result in a net income amount so high that the household would be entitled to a zero allotment. Thus, the amount of the claim would be equal to the entire amount issued to the household. The household still would have been categorically eligible for food stamps but it would have been entitled to zero benefits. It should be noted that in the case of a household of one or two persons, the minimum benefit rules would apply when calculating the allotment the household was actually entitled to receive.

A claim could also be established if the reason for a household's subsequent PA or SSI ineligibility related to the discovery of an unreported household member that did not receive PA or SSI. Although the household still would have been considered categorically eligible for food stamps based on the fact that the reported members did receive PA or SSI, a claim can be established for the difference between the allotment the household received and the allotment the household should have received as an NPA household had the additional

member been properly reported and included in the calculation of a benefit amount based on household size and net income.

The Department is not restructuring its claims regulations or revising the FNS-209 in order to make a new category for households whose food stamp categorical eligibility was based on PA or SSI eligibility that was subsequently determined improper. Although no existing claims category precisely fits this circumstance, the Department has decided that the existing categories can be used. Once the State agency has determined that the household should not have received PA or SSI, it must determine the cause. This is important particularly to determine whether or not a claim can be calculated and whether the State agency is entitled to retain any portion of the value of the claim and how much. The three categories for claims are inadvertent household error, administrative error, and intentional Program violation. In accordance with 7 CFR 273.18(h), State agencies are entitled to retain 25 percent of the value of inadvertent household error claims they collect. They are entitled to retain 50 percent of intentional Program violation claims. They are not entitled to retain any portion of administrative error claims because they should not benefit from their own errors.

This final action amends 7 CFR 273.18 to provide that the category for inadvertent household errors will be used when the overissuance was caused by a misunderstanding or unintended error on the part of the household, as provided in 7 CFR 273.18(a)(1). In addition, since the SSI agency is not an agency of State government, instances of SSI agency error will also be considered inadvertent household errors, unless fraud has been determined. Thus, the State agencies would retain a portion of claims collected when the SSI agency would retain a portion of claims collected when the SSI agency has been in error. The category for administrative errors will be used if the overissuance was caused by State agency action or failure to take action. In some cases, the food stamp State agency may not be at fault, but another agency of State government may be. In those cases, in order to prevent the State from benefiting from their own errors, the State agency will be assessed as the responsible agency so long as the State or local welfare agency made the decision. In cases of recipient fraud, the category for intentional Program violation can be used. However, it is important to note

that this claims category can only be used where the food stamp State agency has pursued the case in accordance with 7 CFR 273.16. In other words, a fraudulent act to obtain PA or SSI benefits cannot automatically be considered a fraudulent act to obtain food stamp benefits. A separate and distinct food stamp action must be pursued by the State agency, in accordance with 7 CFR 273.16, before the State agency can use the claims category of intentional Program violation described in 7 CFR 273.18. Until such food stamp action is taken, the category for inadvertent household errors shall be used on the FNS-209.

Quality Control

Waiver of liability. The interim rule contained a special quality control (QC) provision about the implementation of the interim rule. According to that provision (§ 272.1(g)(78)(ii)), QC would not find a case in error solely because of the way a State agency implemented, or did not implement, the interim rule. This special procedure was to be in effect between August 5, 1986 and October 1, 1986. Some commenters asked that the special provision go beyond October 1. One commenter suggested 90 days, one six months. While the Department does not agree that a six-month period is necessary, or even desirable, it is appropriate to allow at least a 60-day period from the first day of the first full month after the August 5 publication date of the interim rule. Another commenter asked how QC should handle variances in cases with review dates before August 5, 1986. These cases are a problem because the interim rule was effective retroactively to December 23, 1985. QC would have found some active (or participating) households ineligible and some negative actions (denials and terminations) valid. Retroactively, the ineligible households became eligible while the valid negative actions became invalid. Accordingly, this final action amends 7 CFR 272.1(g)(78)(ii) to provide that QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of the interim rule in cases with review dates between December 23, 1985 and October 31, 1986. For reviews already completed by State agency QC, the Federal QC system will review and change Federal subsample findings if State agency QC identifies the cases. The State agency QC findings will not be changed. The Department would like to emphasize that this provision applies only to the coding of variances for QC purposes. This provision does not relieve Federal and State QC of their responsibilities to

report information about households to the appropriate authorities. State agencies shall handle all resulting claims and restorations as provided elsewhere in this final action.

Erroneous Information. One commenter suggested that a QC variance should not be charged when the Food Stamp Program receives erroneous information from the State agency's AFDC Program. The commenter pointed out that there is a QC procedure for when a Federal agency provides erroneous information to the Food Stamp Program that a variance will not be charged. (See FNS Handbook 310, section 181.2).

The Department does not agree that QC should treat the provision of erroneous information by a State and Federal agency in the same manner. By law, the Department must not penalize a State agency through QC if the Federal government provided wrong information through automation. The State agency acted as it should have in relying upon the federally provided information. When AFDC payment information was incorrect the State agency itself erred. The State agency did not properly coordinate its AFDC and food stamp components in the transfer of information. Therefore, when the State agency overissues or underissues coupons, QC should charge the State agency with a variance.

Verification. One commenter recommended that QC should not verify income that the AFDC Program had already verified. Another commenter stated that QC should not review benefit levels (presumably AFDC and SSI benefits) because the verification of these levels is superseded by categorical eligibility.

The Department does not agree with these comments for two reasons. First, as explained earlier in this preamble, the amount of the AFDC benefit, SSI benefit, or other verified income is not necessarily deemed for food stamps. Rather, the Food Stamp Program deems (or considers) that the household has met the income eligibility limits. Since the Program still needs the exact income amounts to calculate an allotment, QC must still review those amounts.

Second, QC is usually reviewing a sample month which is not the month of the food stamp application. Between application and the sample month a household's AFDC grant, SSI benefit, or other income may change. The household must report changes in SSI and other non-AFDC income. The State agency must process changes in all three income sources. Therefore, QC must review the income amounts to ensure

that the sample month's allotment reflected all the changes that should have been processed.

Handling changes. One commenter asked how QC would review changes in a household's circumstances. For example, if a household became ineligible for SSI but failed to report the change, would there be an error for food stamps? For eligibility, no. QC does not review the five special factors for eligibility, because eligibility is assumed under the law. If the household members were all authorized (by SSA) to receive SSI, QC accepts that. QC does not verify whether the household members were eligible for SSI. In reviewing benefits, however, the answer may be different. If a household's SSI income changed, QC would review that change. A finding of error may result. As another example of a change, SSA may close a household member's SSI case. If the household did not report this change, would its categorical eligibility be affected? Yes. All households must report all changes in sources of income, like getting new sources and losing old ones. Loss of SSI is a change that must be reported. QC would charge the State agency with a variance if the household was ineligible under normal Program rules.

Review timeframes. In the preamble to the interim rule, the Department described the procedures for reviewing a household's categorical eligibility. As a first step, QC would verify the household's correct composition "as of the review date." The correct procedure is to verify the household's correct composition according to the eligibility system used—prospective or retrospective. Under prospective eligibility, QC verifies composition on the review date. Under retrospective eligibility, QC verifies composition on the last day of the budget month.

Other concerns

Several commenters raised concerns about requiring verification of income not verified by AFDC and whether individual income sources are assumed or just the gross and net tests. Households are only considered to have met the resource test and the gross and net income tests by virtue of FSP eligibility based on their status as PA/SSI recipients. Because the food stamp criteria are used in the benefit calculation, any income, deduction or factor not verified by AFDC or SSI must be verified if required under 7 CFR 273.2(f) for the purpose of a food stamp benefit calculation.

In preparing this action, it came to the Department's attention that the provision of the interim rule of August 5 which amended 7 CFR 273.2(k) could be

misleading. Specifically the phrase "authorized to receive PA or SSI benefits as defined in § 273.2(j)" should read "authorized to receive PA or SSI benefits as discussed in § 273.2(j)". The intent of the reference is to alert users to the fact that categorical eligibility is extended to persons "authorized" to receive AFDC/SSI benefits as well as those in actual receipt of such benefits. As currently written, the regulatory reference appears to direct users to a definition of PA or SSI benefits. To ensure proper use of the provision, this final action amends the regulatory reference phrase in 7 CFR 273.2(k) to clarify Departmental intent.

Implementation

A number of commenters expressed concern with the immediate implementation date and the retroactive effective date of the August 5 interim rule. While the Department understands these concerns, it had no discretion in this area. The Department had to make the provisions effective retroactively to December 23, 1985 because the statute specifically provided that the categorical eligibility provisions of the legislation were effective on that date.

This final action provides that the provisions of this action which adopt, as final without change, a provision of the interim rule or modify a provision of the interim rule for clarity only are retroactively effective to December 23, 1985. The clarifications do not represent any change in intended policy and, thus, do not require any special implementation efforts by State agencies. The QC provision in § 272.1(g)(78)(ii) is also effective retroactively to December 23, 1985 as it is directly related to implementation of the interim rule and has no impact on the implementation of this final rule.

This action further provides that the provisions of this final action which, as the result of changes resulting from the Department's response to comments on the interim rule, require the alteration of State procedures, are to be effective September 1, 1989. State agencies are afforded 60 days in which to complete implementation efforts of the new provisions. QC errors resulting from application of any new provision of this final action shall be handled in accordance with the interim rules published November 2, 1988 (53 FR 44171).

Recision of Expiration Date

In accordance with section 1507 of the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) and the preamble of the August 5, 1986 interim regulations, categorical eligibility was to

be tested only through September 30, 1989. Thus, the provisions of the interim regulation and subsequent final action on those provisions contained in this action would have ceased to be effective on that date. Subsequent legislative action has changed this stipulation. In accordance with section 201 of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988), the Department hereby announces that the provisions of the August 5, 1986 interim regulations which are adopted as final or modified by the provisions contained in this final action, are no longer subject to an expiration date and shall be retained as permanent regulatory policy.

List of Subjects

7 CFR Part 272

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

7 CFR Part 273

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

Accordingly, 7 CFR Part 272 and 273 are amended as follows:

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

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

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. The amendment to add a new paragraph (g)(78) to 7 CFR 272.1, as published at 51 FR 28200, August 5, 1986, is adopted as final. However, paragraph (g)(78)(ii) is revised for clarity.

3. In § 272.1, a new paragraph (g)(108) is added in numerical order, the revision and addition read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(78) * * *

(ii) For quality control (QC) purposes only, QC reviewers shall not identify variances resulting solely from either implementation or nonimplementation of this rule in cases with review dates between December 23, 1985 and October 31, 1986, inclusive.

* * * * *

(108) Amendment No. 314. (i) The provision of Amendment No. 314 which adds five sentences to § 273.2(j)(1)(iv) and the provisions which add a new paragraph § 273.2(j)(2)(iii)(B) and amend §§ 273.17 and 273.18 are effective July 7,

1989 and shall be implemented no later than September 1, 1989.

(ii) All remaining provisions of *Amendment No. 314*, which adopt the interim provisions of August 5, 1986 as final without change or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985 (the effective date of the interim rulemaking). These provisions do not reflect a change in intended policy and, therefore, do not require special implementation efforts by State agencies.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS

4. The amendment to § 273.2, as published at 51 FR 28200, August 5, 1986, to revise introductory paragraph (j) is adopted final without change.

5. The amendment to § 273.2, as published at 51 FR 28200, August 5, 1986, to revise the title of paragraph (j)(1), is adopted final without change.

6. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986, to revise the first two sentences of paragraph (j)(1)(iv) and add a new sentence after the second sentence is adopted final without change.

7. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986 to revise the seventh sentence of paragraph (j)(1)(iv) and add twelve new sentences after the seventh sentence, is adopted final with the following changes: The sentence which begins with the words "The State agency shall not reinterview the household" and the sentence which begins with the words "Any changes shall be initialed" are removed and three new sentences are added in their place; the sentence which begins with the words "Any household determined PA eligible" is removed and a new sentence is added in its place; and the sentence which begins with the words "Benefits shall be paid from" was revised by a subsequent regulation published on January 30, 1989 at 54 FR 4249.

8. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, to redesignate paragraphs (j)(2) and (j)(3) as paragraphs (j)(3) and (j)(4), respectively, and to add a new paragraph (j)(2) are adopted final with the following changes:

§ 273.2 [Amended]

a. New paragraph (j)(2) is amended for clarity as follows:

1. Replacing the parenthetical phrase appearing in the first sentence of paragraph (j)(2)(i) with the phrase "(except those listed in paragraph (j)(2)(iii) of this section)";

2. Changing the reference to "paragraph (ii) of this subsection" appearing in paragraph (j)(2)(i)(D) to read "paragraph (j)(2)(iii) of this section";

3. Redesignating existing paragraphs (j)(2)(iii), (j)(2)(iv) and (j)(2)(v) as new paragraphs (j)(2)(v), (j)(2)(vi) and (j)(2)(vii), respectively;

4. Redesignating paragraphs (j)(2)(ii) introductory text, (j)(2)(ii)(A), (j)(2)(ii)(B), (j)(2)(ii)(C), and new paragraphs (j)(2)(iii) introductory text, (j)(2)(iii)(A), (j)(2)(iii)(B), (j)(2)(iii)(C), respectively;

5. Designating the last three sentences appearing at the end of paragraph (j)(2)(i)(D) as paragraph (j)(2)(ii);

6. Designating the last sentence appearing at the end of newly designated paragraph (j)(2)(iii)(C) as paragraph (j)(2)(iv);

7. Removing the words "any member of that household is disqualified for" from the introductory text of newly designated paragraph (j)(2)(iii);

8. Adding to newly designated paragraph (j)(2)(iii)(A) the words "any member of that household is disqualified for" immediately after the designation "(A)" and removing the semicolon after the reference to § 273.16 and replacing it with the words "or for";

9. Removing from newly designated paragraph (j)(2)(iii)(B) the regulatory designation "(B)" and replacing the word "Failure" with the word "failure";

10. Removing the word "Failure" in newly designated paragraph (j)(2)(iii)(C) and adding in its place the words "the head of the household is disqualified for failure"; and

11. Adding before the period at the end of newly designated paragraph (j)(2)(iv) the words "(including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions".

b. New paragraph (j)(2)(iii)(B) is added.

Pursuant to amendment numbers 7 and 8a through 8b stated above, § 273.2 (j)(1)(iv) and (j)(2) are revised to read as follows:

§ 273.2 Application processing.

* * * * *

(j) PA, GA, and categorically eligible households. * * *

(1) * * *

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible.

However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in § 273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a

denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or its authorized representative to initial *all* changes, resign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved. Households who file joint applications for food stamps and PA and whose PA application are subsequently denied may be required to file new food stamp applications or may have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits. 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.

(2) *Categorically Eligible Households.*
(i) Any household (except those listed in paragraph (j)(2)(iii) of this section) in which all members receive or are authorized to receive PA and/or SSI benefits shall be considered eligible for food stamps because of their status as PA and/or SSI recipients unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in § 273.2(f) because of PA/SSI status are the resource, gross and net income limits; social security number information; sponsored alien information; and residency. If any of the following factors are questionable, the State agency shall verify, in accordance with § 273.2(f), that the household which is considered categorically eligible:

- (A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph § 273.2(j);
 - (B) Meets the household definition in § 273.1(a);
 - (C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and
 - (D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(iii) of this section.
- (ii) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

(iii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.18 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with § 273.22; or

(C) The head of the household is disqualified for failure to comply with the work requirements in accordance with § 273.7.

(iv) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of § 273.11(c)) and cannot be reinstated in the Program of the basis of categorical eligibility provisions.

(v) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.2.

(vi) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(vii) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273.10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(F) Section 273.10(e)(2)(iii)(A).

9. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, which amended the introductory text of newly designated paragraph (j)(3)(i), amended newly designated paragraph (j)(3)(ii), and amended the first sentence of newly designated paragraph (j)(4) are adopted final without change.

10. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986, to remove the third sentence of introductory paragraph (k) and add

three new sentences in its place is adopted final with the following clarity change: The sentence added by this earlier amendment which begins with the words "However, households in which all members are either PA or SSI" is amended by replacing the words "as defined in § 273.2(j)" with the words "(as discussed in § 273.2(j))".

11. The amendment to § 273.8, as published at 51 FR 28202, August 5, 1986, to remove the last sentence in paragraph (a) and add a new sentence in its place is adopted final without change.

12. The amendment to § 273.9(a), as published at 51 FR 28202, August 5, 1986, to add a new sentence after the third sentence in introductory paragraph (a) is adopted final without change.

13. The amendment to § 273.10, as published at 51 FR 28202, August 5, 1986, to add a new paragraph (d)(7) is adopted. However, new paragraph (d)(7) is revised for clarity.

14. The amendment to § 273.10, as published at 51 FR 28202, August 5, 1986, to add a new sentence to the end of paragraph (g)(1)(ii) is adopted final without change.

The revised § 273.10(d)(7) reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

(d) Determining deductions * * * (7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23,

1985, whichever is later, if the household incurs such expenses.

15. In § 273.17, the last sentence of the introductory text of paragraph (a)(1) is amended by replacing the first word of the sentence "Benefits" with the words "Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits".

16. In § 273.18:

- a. paragraphs (a)(1) and (a)(2) are revised;
b. new paragraphs (b)(1)(iv), (b)(1)(v) and (b)(2)(vi) are added;
c. two sentences are added at the end of paragraph (c)(1)(ii).

The additions and revision read as follows:

§ 273.18 Claims against households.

- (a) * * * (1) Inadvertent household error claims. A claim shall be handled as an inadvertent household error claim if the overissuance was caused by: (i) A misunderstanding or unintended error on the part of the household; (ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount; (iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size. (2) Administrative error claims. A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or household size. (b) * * * (1) * * * (iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it. (v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI. (2) * * * (vi) An agency of the State or local government took an action or failed to take an appropriate action, which

resulted in the household improperly receiving PA.

- (c) * * * (1) * * * (ii) * * * For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

Date: May 30, 1989. G. Scott Dunn, Acting Administrator. [FR Doc. 89-13292 Filed 6-6-89; 8:45 am] BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

7 CFR Parts 271, 272, 273, 274, and 277

[Amdt Number 316]

Food Stamp Program: Administrative Improvement and Simplification Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends Food Stamp Program regulations to implement several Food Stamp Program provisions contained in The Hunger Prevention Act of 1988. The provisions of that Act which are addressed in this rule are: (1) Verification; (2) telephone access to certification offices in order to receive program information or to report changes; (3) simplified applications; (4) joint applications; (5) expanding the definition of disabled; (6) annualizing self-employment income and expenses from farming; (7) resource exclusions for farm households in transition from farming; (8) simplified procedures for claiming the excess medical deduction; (9) program information for low-income households; (10) optional training for volunteer and non-profit organizations; (11) federally authorized demonstration projects which cash out benefits in other assistance programs; and (12) delivery of benefits to households which apply after the fifteenth of the month.

DATE: The provisions contained in § 274.2(b) of this rule are effective retroactively to January 1, 1989 to be implemented by State agencies no later than January 1, 1990. The remaining provisions are effective July 1, 1989 and

must be implemented by State welfare agencies on that date.

Comments must be received on or before August 7, 1989.

ADDRESS: Comments should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification and Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 am to 5:00 pm Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 705.

FOR FURTHER INFORMATION CONTACT: Questions regarding this interim rule should be directed to Ms. Seymour at the above address or by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12291/Secretary's Memorandum 1521-1

This interim rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1. The rule will affect the economy by less than \$100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified the rule as "not major".

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 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This interim rule will affect Program participants and the State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

The reporting and recordkeeping burden associated with the certification and continued eligibility of food stamp households is approved by the Office of Management and Budget (OMB) under OMB control number 0584-0064.

The food stamp application, as approved under this OMB number, already contains several important verification statements to the household. The requirement in § 273.2(c)(5) that State agencies develop a separate written general "Notice of Verification" versus including such information on the food stamp application or verbally conveying such information to households does not alter or change the methodologies used to determine the burden estimates approved under OMB No. 0584-0064.

The requirements in § 272.2(a), § 272.2(d) and § 272.5 relative to the submission and updating of an optional "Program informational activities planning document" as part of a State agency's Plan of Operation have been submitted to OMB and have been approved under OMB approval number 0584-0083. This rule amends the table at 7 CFR 271.8 "Information collection/recordkeeping—OMB assigned control numbers" to reflect the OMB control number for the approval of burden associated with § 272.5 of this rule.

The remaining provisions of this rule do not contain any reporting and/or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This interim rule is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to publication. Section 701(b)(5)(A)(i) of Pub. L. 100-435 mandates that except for the amendments in § 274.2, the provisions contained in this rule are effective on July 1, 1989. The amendments to the Food Stamp Act reflected in § 274.2 of this rule are effective January 1, 1989, to be implemented by the State agencies not later than January 1, 1990. Since prior notice and public comment procedures cannot be completed before the statutory effective date and because delays in implementation could adversely affect food stamp households and State agencies, G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on this interim rule prior to implementation is impracticable. The amendments reflected in the provisions of § 274.2 of this interim rule

are non-discretionary. However, because the Department believes that the administration of those provisions may be improved by public comments, the Department is soliciting comments on the entire rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

The Hunger Prevention Act (HPA) of 1988 (Pub. L. 100-435, 102 Stat. 1645, Sept. 19, 1988) made a number of changes to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et. seq.). This interim rulemaking pertains to those provisions of Pub. L. 100-435 which simplify certain application procedures in the program and improve the administration of the Food Stamp Program. These provisions are discussed below.

Definition of Elderly or Disabled—7 CFR 271.2

The current definition of elderly or disabled persons contained in section 3(r) of the Food Stamp Act and reflected in 7 CFR 271.2 of the food stamp regulations includes recipients of certain old-age or disability benefits.

Persons identified as elderly or disabled are provided with certain special treatment in the determination of their food stamp eligibility and coupon allotment. Under 7 CFR 273.9, elderly or disabled persons: (1) Have the right to claim an allowable medical expense as a deduction from income; (2) may claim excess shelter costs as a deduction from income without regard to the shelter deduction limit imposed on other households; and (3) are exempted from the food stamp income eligibility test.

Section 350 of Pub. L. 100-435 adds three categories to the definition of elderly or disabled persons. These categories are: (1) Recipients of interim assistance benefits pending the receipt of supplemental security income; (2) recipients of disability-related medical assistance benefits under title XIX of the Social Security Act (SSA); and (3) recipients of disability-based State general assistance benefits. Recipients of any of these benefits must be treated as disabled persons for food stamp purposes provided the eligibility to receive the benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the SSA. Accordingly, this rule amends 7 CFR 271.2 to bring the definition of disabled into conformance with the provisions of Pub. L. 100-435.

In addition, current rules at 7 CFR 273.2(f)(1)(viii)(A) require that the State agency verify disability as defined in 7 CFR 271.2 and discusses what documentation would be acceptable verification. Consequently, this rule makes a conforming amendment to 7 CFR 273.2(f)(1)(viii)(A) to add a new paragraph (A)(6) to specify the documentation the recipients of any of the benefits discussed above must provide to verify the receipt of these benefits.

Training—7 CFR 272(d)

Section 322(a) of Pub. L. 100-435 amended section 11(e)(6) of the Food Stamp Act by adding a phrase to specify that comprehensive training should be provided to state personnel " * * * so that eligible households are promptly and accurately certified to receive allotments for which they are eligible * * * ." Current regulations at 7 CFR 272.4(d)(1)(i) already require State agencies to provide sufficient training. This statutory amendment expresses a Congressional concern that food stamps are delivered promptly and accurately to eligible households. To relay this concern, this rule amends 7 CFR 272.4(d)(1)(i) to specifically require that training provided by the State agency must convey the goals of and methods for promptly and accurately certifying eligible households.

In addition, section 322(b) of Pub. L. 100-435 added a new provision to section 11(e)(6) of the Food Stamp Act. This new statutory provision allows State agencies, at their option, to provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that give information or perform eligibility screening to persons potentially eligible for food stamps.

Current rules do not prohibit State agencies from opening their training sessions to the public, at their discretion. However, in order to relay Congressional intent and specifically address training and assistance directed to persons working with volunteer or nonprofit organizations, this rule amends 7 CFR 272.4(d) to redesignate current paragraph (d)(2) as (d)(3) and add a new paragraph (d)(2) to allow State agencies, at their option, to offer training and assistance to persons working with certain volunteer or nonprofit organizations. This rule change also takes into consideration State agency staff and budget constraints, since the provision of this assistance and training is optional.

In addition, this rule adds a new paragraph (f) to 7 CFR 277.4 to provide that the expenses (e.g., travel costs,

lodging, or meals) of the persons working with the volunteer or nonprofit organizations who receive this training and assistance would not be reimbursed. For those State agencies choosing to provide or contract for this training and assistance, allowable costs would be matched at the fifty percent level by the Federal Government in accordance with 7 CFR 277.4. Procurement standards at 7 CFR 277.14 would apply if the State agency intends to contract to provide the training and assistance.

Information for Low-Income Households—7 CFR 272.5(c)

Section 204(a) of Pub. L. 100-435 amended section 11(e)(1)(A) of the Food Stamp Act to allow State agencies, at their option, to inform low-income households about the availability, eligibility requirements, application procedures and benefits of the Food Stamp Program and receive Federal funding for such outreach activities. Prior to Pub. L. 100-435, the Food Stamp Act generally prohibited Federal funding for outreach activities, but allowed State agencies the option of conducting informational activities directed only at homeless individuals; the costs of which were eligible for 50 percent Federal reimbursement. The statutory amendment made by Pub. L. 100-435 replaces the general prohibition and exception with a provision that State agencies, at their option, may conduct outreach activities aimed at low-income households. Section 204(b) of Pub. L. 100-435 also amended section 16(a)(4) of the Food Stamp Act to specify that costs of such program informational activities are eligible for Federal reimbursement at the 50 percent reimbursement rate.

Current rules at 7 CFR 272.5(c) provide that State agencies, at their option, may carry out program informational activities directed toward the homeless, that only such efforts specifically directed towards homeless individuals as defined in 7 CFR 271.2 will be funded according to procedures established at 7 CFR 277 and that State agencies must inform FNS in writing what they will do to direct the informational activities only towards individuals who are actually homeless. Current procedures at 7 CFR 277, Appendix A, paragraph C.(14) specify that costs incurred as a result of State agencies' outreach programs are not allowable costs, with the exception of program informational activities directed toward the homeless.

In accordance with Pub. L. 100-435, this rule revises 7 CFR 272.5(c) to specify that State agencies, at their option, may request reimbursement under 7 CFR 277 for Program informational activities

designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the Food Stamp Program.

In addition, current rules at 7 CFR 272.5(b)(3) require that all Program informational materials be available in languages other than English as specified in the bilingual requirements at 7 CFR 272.4(b). Consequently, this rule makes a conforming amendment to 7 CFR 272.5(c) to specify that if a State agency elects to request reimbursement for Program informational materials directed at low-income households, those materials must meet the bilingual requirements.

Before allowing costs for the subject program informational activities to be eligible for reimbursement, the Department wants to know which State agencies plan to claim such costs for reimbursement. Consequently, this rule further amends 7 CFR 272.5(c) to require that prior to claiming such costs, State agencies must receive FNS approval of an attachment to their Plans of Operation. A conforming amendment is made to 7 CFR 272.2(a)(2) to add a reference to the optional "Program informational activities plan" as a component of the States' Plan of Operation. A conforming amendment is also made to 7 CFR 272.2(d)(1) to add the requirement that State agencies submit the optional "Program informational activity" planning document to FNS for inclusion in the States' Plan of Operation. Lastly, a conforming amendment is also made to 7 CFR 277, Appendix A, to remove paragraph C.(14) which is made obsolete by this rule.

Under rules published November 6, 1979 (44 FR 64386), State agencies were required to conduct extensive Food Stamp Program outreach activities, including the annual submission for FNS approval of a detailed plan for such activities. The revisions to 7 CFR 272.5(c) contained in this rule would not require that information be provided in the Plan of Operation beyond a description of the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. At this time, the Department is not requiring that State agencies report this Program activity on the Program Activity Statement (Form FNS-366B). However, in accordance with current rules at 7 CFR 272.2 (c), (e) and (f), State agencies must update their Plans of Operation to reflect significant changes in their Program informational

activities plan. Also, current rules at 7 CFR 272.2(a) would require the State agency to report projected amounts budgeted for this program activity on the Budget Projection Statement (Form FNS-366A). The Department is not revising Form FNS-366A to provide a separate reporting line for this budget activity. State agencies should report budget estimates for this activity in the section of Form FNS-366A identified as "Other."

Waiver of the In-Office Interview—7 CFR 273.2(e)

In order to be certified for food stamp benefits, applicant households must complete an application and an interview and provide required documentation to verify statements on the application. Current rules at 7 CFR 273.2(c) require that an application must be submitted to the certification office either in person, by mail, or through an authorized representative (i.e., an adult person other than a household member who has been designated by the head of the household, or the head of the household's spouse, to represent the household during the certification process). Because benefits are calculated for eligible households as of the date the application is filed, State agencies are required to encourage households to file the application the same day the household contacts the food stamp office. If the household requests that an application be mailed, the State agency must send an application on the same day the household makes the request.

Current rules at 7 CFR 273.2(e) require all applicant households to have a face-to-face interview in a food stamp office or other certification site with an eligibility worker prior to all certification and recertification actions. However, the in-office interview must be waived, if requested by any household which is unable to appoint an authorized representative and is unable to send a household member to the food stamp office because they: (1) Are elderly or disabled as defined in 7 CFR 271.2; live in a location which is not served by a certification office; (2) are experiencing transportation difficulties as determined by the State agency on a case-by-case basis; or (3) are experiencing other hardships that the State agency determines warrants a waiver of the in-office interview such as illness, care of a household member, prolonged severe weather or work hours. If the in-office interview is waived, the State agency has the option to conduct a telephone interview or a home visit.

Section 330 of Pub. L. 100-435 amends section 11(e)(2) of the Food Stamp Act to explicitly specify, as the current rules do, the circumstances under which an applicant household must be waived from the in-office interview. The amendments are intended to assist some applicants (e.g., the elderly, disabled or rural poor) who may be eligible for participation in the Food Stamp Program but fail to submit or complete the application process because of transportation-related difficulties. Section 330, for the most part, adopts the current policy at 7 CFR 273.2(e) which specifies who may be waived from an in-office interview. However, in order for the regulations to be completely consistent with the law, some modification to the current rules is necessary.

Section 330 specifies that, in addition to considering the currently specified serious hardships, the State agency must also consider the hardships associated with living in a rural area and employment or training hours which may prevent an applicant from participating in a face-to-face interview in the certification office. Accordingly, this rule amends 7 CFR 273.2(e)(2) to include these two conditions as serious hardships warranting waiver of the in-office interview.

The Food Stamp Application Form—7 CFR 273.2(b)

Under section 11(e)(2) of the Food Stamp Act, and the regulations at 7 CFR 273.2(b), State agencies must use the food stamp application form designed by the Food and Nutrition Service (FNS) unless the State agency receives approval from FNS to deviate from the FNS food stamp application form. State agencies may deviate from the FNS food stamp application form in order to process joint applications with other assistance programs, meet the requirements of a State agency computer system or accommodate other State agency needs that are determined to be justifiable. State agency applications may be approved for these reasons provided the application is understandable and easy for applicants to use.

Whether the State agency uses the FNS application form or designs its own application, 7 CFR 273.2(b) requires that all applications contain: (1) A statement informing applicants that the information provided by the household is subject to verification by Federal, State and local officials and the consequences that may occur if information provided on the application is incorrect; (2) a description of the civil and criminal penalties for violations of

the Food Stamp Act; (3) a statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application; and (4) a statement to be signed by all household members (adults must sign for children under 18 years of age) attesting, under penalty of perjury, to their citizenship or alien status.

Section 310 of Pub. L. 100-435 amends section 11(e)(2) of the Food Stamp Act concerning the content of the food stamp application form. The legislative history (Senate Report No. 100-397, p. 24) to these provisions reflects Congressional concern that some State agency designed applications—especially applications which allow the household to simultaneously apply for benefits in the Food Stamp, Aid to Families with Dependent Children (AFDC), and Medicaid Programs—are either too lengthy and complex for applicants to use or do not provide applicants with sufficient information concerning the food stamp application process. There is a concern that, as a result of this complexity, eligible households may be discouraged from applying for benefits.

The first provisions in section 310 concerns the approval of State agency applications which deviate from the FNS food stamp application form. This provision mandates that, in addition to its current criteria for approving State agency application forms, FNS must also ensure that the application is brief. Accordingly, this rule amends 7 CFR 273.2(b) to include brevity as a condition for approving deviations from the FNS food stamp application form.

The second provision requires that the Department, in consultation with the Department of Health and Human Services (HHS), to provide guidance to those State agencies requesting assistance in the development of brief, simply-written application forms, including forms that allow for simultaneous application to participate in the Food Stamp, AFDC, and Medicaid Programs. Accordingly, this rule amends 7 CFR 273.2(b) to advise the State agency of its option to request assistance from FNS when developing its application. The Department intends for State agencies to request this assistance through the Deputy Administrator for the Food Stamp Program. The Deputy Administrator, or the Deputy Administrator's designee, would oversee the review of an application form by FNS officials at the Regional level and would coordinate the review of the application form with the HHS. The Regional officials will be

responsible for coordinating between the State agency and National Office.

The last provision under section 310 requires that all applications for food stamp benefits contain certain statements which advise the household of important information about the application process. These required statements include: (1) A place on the front cover where applicants can write their names, addresses, and signatures; (2) instructions that advise the household of their right to file the application without finishing all parts; (3) a statement describing the expedited service procedures; and (4) a statement that informs the household that benefits are provided only from the date of application. Accordingly, this rule amends 7 CFR 273.2(b) to require that the food stamp application form contain the above information. The Department is also taking this opportunity to restructure 7 CFR 273.2(b) in its entirety in order to display all information required to be on the application form in a more readable and understandable format.

The current six-page food stamp application form (FNS-385) designed by FNS contains statements advising the household of their right to file the application and a general description of the expedited service procedures. However, the application form does not contain a statement informing the applicant household that benefits are provided from the date of application. The Department is currently revising the FNS-385 to include this statement and to provide a more specific description of the expedited service process. The Department will distribute the revised application to the State agencies as soon as this revision is completed.

Joint Processing of Applications—7 CFR 273.2(j)

As previously mentioned, Congress has serious concerns about complex application procedures which may discourage eligible households from participating in the Program. Therefore, in addition to procedures which ensure that the application is simple and easy for applicants to use, section 352 of Pub. L. 100-435 includes provisions which ensure that applicants for public assistance (PA) or general assistance (GA) are able to apply for food stamp benefits on the same application form. This section reinstates practices that were initially required under the original Food Stamp Act of 1977 but were subsequently made optional. To clarify the current change, the Department is providing a brief history of these provisions from the enactment of the Food Stamp Act of 1977 until the

enactment of the Hunger Prevention Act of 1988.

Under section 11(i) of the Food Stamp Act of 1977 (Pub. L. 95-113, 91 Stat. 958, Sept. 29, 1977), the State agency was required to: (1) Conduct a single interview to determine the household's eligibility for food stamps and AFDC; (2) permit households in which all members are recipients of Supplemental Security Income (SSI) to apply for food stamp benefits by completing a simple application at the Social Security Office; (3) include the application for food stamps in the application for PA or GA for households in which all applicant household members were included in a PA or GA grant; and (4) certify households which had recently been denied or terminated from PA or GA on the basis of information that was available in the PA or GA casefile provided the information was sufficient for food stamp purposes. The intent of these provisions was to ensure that applicants would not have to repeat similar application procedures when applying for PA or GA and food stamp benefits at the same time.

In an attempt to relieve State agencies from certain administrative burdens while maintaining joint application procedures, the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253, 96 Stat. 763, Sept. 8, 1982) gave State agencies the option to implement sections 11(i) (3) and (4) noted above relative to combining the food stamp application with the PA or GA application and certifying recently denied or terminated PA or GA households based on information from the PA or GA casefile. The requirements relative to the single interview and the application procedures for pure SSI households continued to be mandatory.

Section 352 of Pub. L. 100-435 reflects a renewed desire to streamline the application process for applicant food stamp households. As a result, State agencies are required to implement the previously optional provisions under section 11(i) (3) and (4) of the Food Stamp Act of 1977, as amended. In addition, section 352 requires that the State agency notify all AFDC applicants of their right to apply for food stamps at the same time that they apply for AFDC benefits.

Accordingly, this rule amends 7 CFR 273.2 (j) and (j)(1)(i) to require the State agency to combine the application for food stamps with the application for PA and GA and to notify AFDC applicants of their right to file a joint application. This rule also amends 7 CFR 273.2(j)(1) to add a new paragraph (j)(1)(v), which specifies that households whose PA/GA

applications are denied or PA/GA eligibility terminated shall not be required to file a new application, but shall have their food stamp eligibility and benefits determined by available information from the PA/GA casefile provided the information is sufficient for food stamp purposes.

Application Process—Verification—7 CFR 273.2(f) and 273.21(j)

Current rules at 7 CFR 273.2(f) define verification as the use of third-party information or documentation to establish the accuracy of statements on the application. Information regarding gross non-exempt income, social security numbers, residency and the identity of the household member making the application must be verified by the State agency prior to certifying any applicant household for benefits. If applicable, the State agency must also verify the household's utility expenses, medical expenses and the alien status or disability of individual household members. Finally, the State agency must verify other factors of eligibility it determines are questionable, such as household composition.

There are three sources of verification currently identified in 7 CFR 273.2(f)(4). The first source is documentary evidence which consists of the written confirmation of a household's circumstances. The second source is a collateral contact, or the oral confirmation of a household's circumstances. The last source—which is used only when the other sources are insufficient to make a firm determination of eligibility—is a prearranged home visit.

Under the current rules at 7 CFR 273.2(f)(5), the household is primarily responsible for providing documentation to verify its income and to resolve any questionable information. However, if it would be difficult or impossible for the household to obtain documentary evidence in a timely manner, or if the household has provided insufficient documentation, the State agency must either offer assistance to the household, use a collateral contact, or arrange a home visit.

Section 311 of Pub. L. 100-435 contains five provisions which amend section 11(e)(3) of the Food Stamp Act. The first provision, section 311(A), requires the State agency to provide all applicant households with a clear written statement explaining what the household must do to cooperate in obtaining verification and completing the application. The second and third provisions, sections 311 (B) and (E), require the State agency to help

households obtain required verification when the household is cooperating with the State agency to complete the application process. The fourth provision, section 311(C), prohibits the State agency from requiring the applicant household to submit additional verification when the household has provided adequate sources of verification unless the State agency determines that the verification is inaccurate, incomplete, or inconsistent. Lastly, section 311(D) prohibits the denial of an application solely because a person outside of the household (who is not a person outside of the household because of a specific disqualification action or ineligible status) fails to cooperate with the State agency's processing of the application.

The legislative history (House Report No. 100-828, p. 23 and Senate Report No. 100-397, pp. 24-25) suggests that the above provisions should reduce error rates, establish uniform verification standards, and remove the possibility that households will be subject to excessive verification requirements.

In order to bring current rules into conformity with sections 311 (A), (B), and (E) of Pub. L. 100-435, this rule amends 7 CFR 273.2 to add a new paragraph (c)(5), which specifies the State agency requirements pertinent to the written statement. Under this provision, the State agency shall provide the household at each certification and recertification with a written statement that advises the household of the verification that must be submitted in order to be certified for food stamp benefits. In addition, the notice shall advise the household that the State agency will help the household obtain the required verification provided the household is cooperating with the State agency to complete the application. Also, the notice shall be written in clear and simple language and meet the bilingual requirements described in 7 CFR 272.4(b).

The Department is allowing the State agencies to design their own written statement. However, the Department encourages the State agencies to develop a general written statement that could be given to all applicant households, rather than a written statement which would need to be tailored to each applicant household. This would ensure that applicant households are treated consistently and would prevent the possibility that households are subject to multiple verification requests.

In addition, current rules at 7 CFR 273.2(h)(1)(i) specify the criteria the State agency must use to determine if the household or State agency caused a

delay in processing the application. Consequently, this rule makes a conforming amendment to 7 CFR 273.2(h)(1) to add a new paragraph (h)(1)(i)(C), which includes the requirement that the State agency must consider whether or not the State agency provided the household with the statement of required verification when determining if a delay in the application process was caused by the State agency or the household.

In respect to the fourth provision, section 311(C), the legislative history (House Report No. 100-828, p. 23) indicates that the intent of this provision is to prevent the State agency from requiring the household to provide multiple sources of verification when the household has already provided verification which adequately supports statements on the application. However, the State agency under this section may require the household to provide additional verification when the State agency determines that existing verification is incomplete, inaccurate or inconsistent.

Accordingly, this rule amends the verification standards for recertification at 7 CFR 273.2(f)(8)(i) (A) and (C), when changes are reported between certification actions at 7 CFR 273.2(f)(8)(ii), and for households subject to monthly reporting and retrospective budgeting (MRRB) at 7 CFR 273.21(i) (1) and (3) and (j)(3)(iii)(B). These changes specifically provide that the State agency cannot request verification for information when the household has provided sufficient verification or existing verification in the casefile adequately verifies the household's current circumstances. However, the State agency may request additional verification if the State agency determines that the verification provided by the household is incomplete, inaccurate, outdated, or inconsistent with recently reported information.

Finally, in respect to section 311(D), this rule amends 7 CFR 273.2(d)(1) to provide that the household may not be determined ineligible when a member outside of the household fails to cooperate with a request for verification. However, in accordance with section 311(D), this provision of the rule provides that the provision shall not apply when the person refusing to cooperate: (1) Is a member outside of the household because the person is either an ineligible student, ineligible alien, or SSI recipient in a "cash-out" State; or (2) has been disqualified for an intentional Program violation, a workfare sanction, or noncompliance with work requirements. The legislative history

(Senate Report No. 100-397, pp. 24-25) indicates that these nonhousehold members cannot be considered as persons outside the household because they would otherwise be a household member if not for a specific disqualification or ineligible status. Because the legislative history is specific about the treatment of nonhousehold members who would otherwise be included as a member in the food stamp household, it is the Department's view that two other categories of nonhousehold members who cannot be considered as a person outside of the household need to be included. These two categories are: individuals disqualified for failure to provide an SSN and persons who fail to attest to their citizenship or alien status. Accordingly, this rule amends 7 CFR 273.2(d)(1) to include a regulatory reference to 7 CFR 273.1(b)(2) to reflect this decision.

Demonstration Projects/Cash-Outs in Other Benefit Programs—7 CFR 273.9(c)(1) and 273.10(d)(1)

Current rules at 7 CFR 273.9 identify the sources of income that are either included or excluded from income in the determination of a household's food stamp eligibility and benefit level. One income exclusion specified under 7 CFR 273.9(c)(1) is any gain or benefit which is not in the form of money payable directly to the household, including nonmonetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden, and vendor payments. Direct cash payments, however, are not excluded from income under 7 CFR 273.9 and therefore must be included in the determination of a household's food stamp eligibility and benefit level.

In order to test methods which may improve benefit delivery in other assistance programs, State agencies may conduct federally authorized demonstration projects which are established through Federal legislation or which are created by the waiver of provisions of Federal law. Should a State agency, as a condition of the demonstration project, convert an in-kind or vendor payment to a direct cash payment, the payments would no longer be excluded from income but would be included in the food stamp eligibility and benefit level computations. Thus, under current rules, if a food stamp household is participating in a demonstration project which converts an indirect payment to a direct cash payment, the household could experience a decrease in its food stamp

benefit level or could lose its eligibility for food stamps.

The legislative history to Pub. L. 100-435 (Senate Report No. 100-397, pp. 27-28 and House Report No. 100-828, pp. 24-25) reveals Congressional concerns in ensuring that State agencies have the flexibility to test alternate ways to deliver benefits in other assistance programs without adversely affecting those food stamp households which are participating in a federally authorized demonstration project. Section 340 of Pub. L. 100-435, in response to these concerns, amends section 5(d)(1) of the Food Stamp Act to specify that any income which would normally be excluded under 7 CFR 273.9(c)(1), but has been converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project, must continue to be excluded from income in the determination of a household's food stamp eligibility and benefit level. This would also apply to demonstration projects created by the waiver or provision of Federal law.

Accordingly, this rule amends 7 CFR 273.9(c)(1) to specify that in-kind or vendor payments which would normally be excluded as income but are converted in whole, or in part, to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by waiver of the provisions of Federal law) shall continue to be excluded from income.

This rule also addresses how expenses would be handled if an excluded vendor payment is converted to a direct cash payment under the approval of a federally authorized demonstration project. Under current rules at 7 CFR 273.10(d)(1)(i), any excluded vendor payment is not deductible as a household expense. Thus, in order to ensure that excluded vendor payments which have been converted to a direct cash payment are treated as an excluded vendor payment, this rule amends 7 CFR 273.10(d)(1)(i) to specify that expenses covered by an excluded vendor payment which is converted to a direct cash payment under the approval of a federally authorized demonstration project is not a deductible household expense.

Specified Procedures for Claiming the Medical Deduction—7 CFR 273.9, 273.12 and 273.21

Current rules at 7 CFR 273.9(d)(3) allow elderly and disabled household members as defined in 7 CFR 271.2 to claim certain medical expenses exceeding \$35 as an income deduction. Other household members who are not

elderly or disabled cannot claim their medical costs as a deduction.

Unless the household is subject to Monthly Reporting and Retrospective Budgeting (MRRB), the State agency must, in accordance with 7 CFR 273.12(a), calculate the medical deduction based on expenses the household expects to be billed for during the certification period. These households, in turn, are required to report any changes of more than \$25 in allowable medical expenses.

Households subject to MRRB are required to report and verify their allowable medical expenses monthly. However, because the MRRB procedures exclude households in which all adult members are elderly and disabled and have no earned income, most households which are eligible to receive an excess medical deduction are excluded from MRRB procedures.

The determination of the medical deduction and the requirements related to reporting changes in medical expenses have proven difficult for both participating households and State agencies. For example, households sometimes neglect to report information which would ensure that they receive the amount of benefits to which they are entitled. Similarly, State agencies have requested clarification of the requirements related to reporting changes in medical deductions because they are liable for errors resulting in the calculation of the medical deduction.

In order to reduce these administrative burdens and ensure that the medical deduction is properly applied to all households which are eligible to receive the deduction, section 351 of Pub. L. 100-435 amends section 5(e) of the Food Stamp Act and requires the State agency to offer eligible households a method for claiming a deduction for recurring medical expenses in place of provisions that require the household to report and verify expenses monthly. Legislative history surrounding this provision in the Hunger Prevention Act (House Report No. 100-828, p. 26) indicates that Congress intended this method to replace current reporting and verification procedures for those households subject to MRRB and, in its place, require these MRRB households to report changes in recurring medical expenses periodically.

In order to conform to the requirements of section 351, the Department is changing current reporting and verification requirements for allowable medical expenses under the MRRB system. Under this rule, households subject to MRRB are now given the option of reporting and

verifying all medical expenses monthly as currently required under the MRRB procedures, or of reporting and verifying only those changes in medical expenses during the certification period which exceed \$25. Whichever option is chosen, the household is only required to report changes on the monthly report. The State agency is not allowed to require the household to report changes outside of the monthly report. Accordingly, this rule amends 7 CFR 273.21(h) (3)(i) and (3)(ii), (i)(1), and (j)(3)(iii) to specify the household's options with regard to reporting and verifying medical expenses in an MRRB system.

In addition to the above change which is required as a result of Pub. L. 100-435, the Department believes that another change to the current regulations at 7 CFR 273.12(a)(1)(vi) would simplify reporting changes in medical expenses. This rule requires that changes in total medical expenses greater than \$25 must be reported, as opposed to a \$25 change in each individual allowable medical expense. For instance, under this requirement, if the household incurs a new ongoing \$50 medical expense at the same time the household stops incurring an ongoing \$40 expense, the household would not be required to report either change because the total change is \$10. However, if the household incurs two new ongoing expenses of \$20 each, the household would be required to report both changes because the total change is greater than \$25. Currently, the household is required to report the two changes in the first example although the effect of the changes is minimal. The changes in the second example are not required to be reported under current rules even though the total effect of the changes is a \$40 difference. The Department has received numerous policy requests which indicate that the current requirements are confusing in certain situations. Accordingly, this rule amends 7 CFR 273.12(a)(1)(vi) to specify that changes greater than \$25 in total medical expenses must be reported. A conforming amendment is made to 7 CFR 273.21(h)(3) to also reflect this policy for MRRB households.

Taken together, the Department believes the above changes satisfy the legislative requirement that households be provided with a method to report and verify recurring medical expenses and further simplify the requirements surrounding the medical deduction. However, given the complexity of this area, the Department welcomes any comments or recommendations which may provide alternative methods for eligible households to claim the medical deduction.

Reporting Responsibilities—7 CFR 273.12 and 273.21

Certified households which are not subject to MRRB must report changes in household circumstances within 10 days of the date the change occurs. The current rules at 7 CFR 273.12(a) identify the types of changes in household circumstances these certified households are required to report during the certification period. This method is known as "change reporting." Households subject to change reporting must be provided with a report form under 7 CFR 273.12(b)(1) at certification, recertification or whenever the household needs a new form. Households subject to the MRRB provisions in 7 CFR 273.21 must report changes monthly on the monthly report.

Section 323 of Pub. L. 100-435 amends section 11(e) of the Food Stamp Act and requires the State agency to provide a household, at the time of certification and recertification, with a statement describing the household's reporting responsibilities. Moreover, this section of the Act requires that the State agency provide all households with a toll-free number or a telephone number where collect calls will be accepted in order for the household to reach an appropriate representative of the State agency. The legislative history of Pub. L. 100-435 (Senate Report No. 100-397, p. 25) indicates that the intent of these provisions is to clearly inform a household of its reporting responsibilities and to increase a household's access to the State agency in order for the household to obtain information or report changes. By providing easier access to local offices, households would report more accurate information regarding their food stamp eligibility, and thus reduce the possibility of errors. Accordingly, this rule amends 7 CFR 273.12(b)(1) to specifically require the "change report" from to include a statement describing the household's reporting responsibilities as specified under 7 CFR 273.12(a)(1). In addition, this rule amends 7 CFR 273.12(b)(1) to specify that the "change report" from must contain the number of the Food Stamp Office and a toll-free number or a number where collect calls will be accepted.

The Department's model "change report" form (Form FNS-387) already contains the current list of changes households should be reporting in accordance with 7 CFR 273.12. However, the form does not specifically provide that the household is required to report the changes listed. While State agencies are not required to use this model form,

some State agencies do use it, therefore, the Department will revise the form to clarify that the list of changes in household circumstances contained on the form are *required* to be reported by the household. The revised FNS-387 will be distributed to the State agencies as soon as this revision is completed.

In respect to MRRB, current rules at 7 CFR 273.21 require that the State agency provide MRRB households with a toll-free number at certification in order for the households to ask questions regarding the monthly report. Current rules also require the State agency to provide the applicant households with a copy of a monthly report and a written description of how the report must be completed.

As a result of section 323, this rule amends 7 CFR 273.21(c)(5) to allow the State agency to provide either a toll-free number or a number where collect calls will be accepted. Also, because section 323 requires that a household be provided with the number for both certifications and recertifications, this rule amends 7 CFR 273.21(c) to specify that a toll-free or collect-call number must be provided at all certifications and recertifications. Finally, the current rules already require households subject to MRRB to receive a statement describing the household's reporting responsibilities. Therefore, the Department is not making any further revisions to 7 CFR 273.21(c)(5).

The Department is also amending the provisions relative to the Bilingual Notices, the Notice of Eligibility, the Notice of Denial, and the Notice of Adverse Action. These notices currently contain the telephone number of the Food Stamp Office. As a result of section 323 of Pub. L. 100-435, the Department believes that these notices also must include either a toll-free number or a number where collect calls will be accepted for those households living outside the local calling area. Therefore, this rule amends 7 CFR 272.4(b)(3)(ii)(B), 7 CFR 273.10(g)(1)(i)(A), 7 CFR 273.10(g)(1)(ii) and 7 CFR 273.13(a)(2), respectively, to specify that notices must contain either a toll-free number or a number where collect calls will be accepted.

Special Provisions for Farm Households—7 CFR 273.8, 273.11 and 273.21

Public Law 100-435 contains two provisions which will extend eligibility to farm households which are in need of program assistance but are determined ineligible due to current requirements relating to the treatment of income, deductions or resources.

The first provision, section 341 of Pub. L. 100-435, amends section 5(f)(1)(A) and specifies that self-employed farm households which incur irregular expenses must be given the option to average the income and expenses from the farm operation over a 12-month period. Under 7 CFR 273.11 of the current rules, self-employed farmers who are not subject to MRRB and receive income which represents the household's annual income, regardless of whether it is received monthly or more or less often than monthly, have the farm income annualized over a 12-month period. In accordance with current policy, self-employment income and expenses are annualized over a 12-month period.

These standards do not apply to farm households which are subject to MRRB and receive self-employment farm income monthly. These households must have their farm income counted in the month it is received and have their expenses counted in the month in which the expense is billed or otherwise becomes due. Thus, farm households subject to MRRB which incur irregular expenses may alternate between eligibility and ineligibility for food stamp benefits while other farm households which are allowed to average fluctuating expenses maintain their eligibility for food stamp benefits.

In order to eliminate this inconsistency in the treatment of farm income, section 341 of Pub. L. 100-435 requires that self-employed farm households be given the option of averaging income and expenses over a 12-month period (i.e., annualizing income and expenses). Accordingly, this rule amends 7 CFR 273.21(f)(2)(i) to specify that self-employed farm households which are subject to MRRB have the option to annualize their self-employment income and expenses over a 12-month period. A conforming amendment is made to the self-employment provisions at 7 CFR 273.11 by adding a new paragraph (f)(1)(v) to address this specific household option.

The second provision, section 342 of Pub. L. 100-435, addresses those households which are in the process of terminating their self-employment from farming. Under current rules at 7 CFR 273.8(b), households with resources which exceed \$2000 (\$3000 for households with an elderly member) are not eligible to participate in the program. Current rules at 7 CFR 273.8 (c), (d), and (e) identify the resources which are included and excluded in the determination of a household's eligibility. For self-employed households, property that is essential to

self-employment (e.g., farm land and farm equipment or tools of a tradesman) is excluded in the resource determination of the household's eligibility as long as the household continues to be self-employed. Under current policy, once the household terminates its self-employment, excluded property continues to be excluded if the person intends to return to farming. No specific timeframe is established. For households which do not intend to return to farming, the excluded property is included in the resource determination from the date the household terminates its self-employment. To establish a time limit, section 342 of Pub. L. 100-435 provides that property essential to the self-employment of a household member engaged in farming would continue to be excluded as a resource for one year after a farm household has stopped farming.

Accordingly, this rule amends 7 CFR 273.8(e)(5) to specify that property essential to self-employment of a household member engaged in farming is excluded as a resource for one year from the date the household member terminates his/her self-employment from farming. A conforming amendment is also made to 7 CFR 273.8(h)(1)(i) to specify that any licensed vehicle which had been used over 50 percent of the time in the self-employment of a household member engaged in farming continues to be excluded as a resource for one year from the date the household member terminates his/her self-employment from farming.

Delivery of Benefits to Households Applying After the Fifteenth of the Month—7 CFR 274

Section 203 of Pub. L. 100-435 amends section 8(c) of the Food Stamp Act and requires State agencies to make available to eligible households which apply after the fifteenth of the month prorated benefits for the month of application and benefits for the first full month of participation in a combined allotment. Accordingly, this rule amends 7 CFR 274.2 (b)(2) and (b)(3) to address this statutory requirement. The rule neither changes the method of calculating benefit amounts, nor modifies current standards for application verification.

For eligible households applying under regular certification procedures (i.e., non-expedited service households), this rule clarifies that the combined allotment must be provided within thirty days after the date of application. If the application has not been completed or all information has not been verified

within 30 days, no combined benefits will be issued.

Under current rules at 7 CFR 273.2(i), eligible households which are entitled to expedited service must receive the prorated initial benefits within five days after the date of application. Under section 203 of Pub. L. 100-435, if the application is complete and all verification has been made within that five-day period, the combined allotment shall be issued at that time. If, at the end of the five-day period after the date of application, all verification has not been made, only the prorated benefits for the month of application will be issued. As soon as the verification has been completed, the benefits for the first full month of participation must be issued in accordance with 7 CFR 273.2(i)(4)(iii).

The verification requirements remain unchanged in the new benefit delivery schedules because section 203 only applies to "eligible households." Adherence to the normal requirements for verification is underscored by further reference to eligible households in the legislative history for section 203 of Pub. L. 100-435 (Senate Report No. 100-397, p. 23). The report states that, "[t]he allotment is for the remaining portion of the month in which they apply and for the next month (if they are eligible for benefits in that month)." Therefore, the household's eligibility for benefits in the first full month is not established until verification is complete. Accordingly, this rule amends 7 CFR 274.2 to add a new paragraph (b)(4) which provides that the provision for a combined allotment does not apply to households for which missing or postponed verification has not been received or to households determined ineligible for benefits for the initial application month or the next subsequent month.

In discussing this section's requirement for an "aggregate" allotment, the Senate Report described the Congressional expectation to assure a more timely delivery of initial benefits to eligible households, and to afford State agencies the opportunity to reduce costs associated with benefit delivery (Senate Report No. 100-397, p. 23). In this light the Department will allow State agencies the discretion as to the form of the combined benefit provided by the Section 203, so long as the total amount of benefits is provided at the same time. This would mean that a State agency using mail issuance, may mail the combined issuance in two envelopes; a State agency using an authorization document (ATP) system may issue two documents, for the two months, at the same time.

Section 8(c) of the Food Stamp Act, as amended, and current regulations at 7 CFR 273.10(iii)(C) provide that "no allotment may be issued to a household for the initial month or period if the value of the allotment * * * is less than \$10." This provision is not superceded by Section 203 of Pub. L. 100-435 and continues to apply. Therefore, under the provisions of this rule, eligible households whose benefit amount is less than \$10 in the initial month of application would receive the next full month's benefit more quickly, but the allotment cannot include the initial month's benefit of less than \$10. Accordingly, this rule adds a reference to 7 CFR 273.10(iii)(C) to the new paragraph 7 CFR 274.2(b)(4) to clarify this policy.

Section 203 of Pub. L. 100-435 supersedes the current provisions found at 7 CFR 274.2, paragraphs (b)(2) and (b)(3), which stipulates that eligible households (regular and expedited service) which apply after the fifteenth of the month shall receive benefits for the first full month of participation by the eighth day of the first full month, if any benefits were issued in the month of application.

Implementation—7 CFR 272.1(g)

Under section 701 of Pub. L. 100-435, the provisions contained in § 274.2(b) of this rule are effective January 1, 1989, to be implemented by State welfare agencies no later than January 1, 1990.

Under section 701 of Pub. L. 100-435, the remaining provisions of this rule are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits on or after that date. The rule provides that the current caseload will be converted to these remaining provisions at recertification, at household request or when the case is next review, whichever occurs first and restored benefits provided back to July 1, 1989 or the date of the food stamp application, whichever occurred later. In addition, the rules provide that households which applied for Program benefits between July 1, 1989 and the date the State agency implements these remaining provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the food stamp application, whichever occurred later, if the household is otherwise entitled to benefits, and requests a review of its case or the State agency otherwise becomes aware that a review is needed.

Quality Control

Any variance resulting from the application of this regulation will be handled in accordance with 7 CFR 275.12 of the current rules.

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, Records, 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 277

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

Accordingly, 7 CFR Parts 271, 272, 273, 274 and 277 are amended as follows:

1. The authority citation of Parts 271, 272, 273, 274 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 271—GENERAL INFORMATION AND REGULATIONS

2. In § 271.2 the definition of "Elderly or disabled member" is amended by adding a new paragraph (11) to read as follows:

§ 271.2 Definitions.

"Elderly or disabled member" * * * *
 (11) Is a recipient of interim assistance benefits pending the receipt of Supplemental Security Income, disability related medical assistance under title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

3. In § 271.8, a paragraph designation and corresponding OMB Control Number for § 272.5, paragraph (c), is added in numerical order to read as follows:

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
272.5(c).....	0584-0083

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

4. In § 272.1, a new paragraph (g)(110) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * * *
 (110) *Amendment No. 316.* State welfare agencies shall implement the provisions of *Amendment No. 316* as follows:

(i) the provisions contained in § 274.2(b) of *Amendment No. 316* are effective retroactively to January 1, 1989 and shall be implemented by State welfare agencies no later than January 1, 1990 for all households which newly apply for Program benefits or apply for recertification on or after that date.

(ii) The remaining provisions are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits or apply for recertification on or after that date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first and restored benefits shall be provided, if appropriate, back to July 1, 1989 or the date of the application, whichever is later. Additionally, households which applied for Program benefits between July 1, 1989 and the date the State agency implemented these provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the application, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that a review is needed.

5. In § 272.2, the seventh sentence of paragraph (a)(2) is amended by adding the phrase "the optional plan for

Program informational activities directed to low-income households," after the phrase "Nutritional Education Plan," and a new paragraph (d)(1)(ix) is added to read as follows:

The additions read as follows:

§ 272.2 Plan of operation.

(d) *Planning Documents.*

(ix) A plan for Program informational activities as specified in § 272.5(c).

6. In § 272.4:

a. Paragraph (b)(3)(ii)(B) is amended by replacing the phrase, "the telephone number to call for more information," with the phrase, "the telephone number (toll-free number or a number where collect calls will be accepted for households outside the local calling area) which the household may call to receive additional information."

b. Paragraph (d)(1)(i) is amended by adding a sentence to the end of that paragraph.

c. Paragraph (d)(2) is redesignated as paragraph (d)(3) and a new paragraph (d)(2) is added.

The additions and revisions read as follows:

§ 272.4 Program administration and personnel requirements.

(d) *Training.*

(i) * * * * Training must convey the goals and methods for promptly and accurately certifying eligible households.

(2) *Additional training.* At their option, State agencies may provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps.

7. In § 272.5, paragraph (c) is revised to read as follows:

§ 272.5 Program informational activities.

(c) *Program informational activities for low-income households.* At their option State agencies may carry out and claim associated costs for Program informational activities designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the Food Stamp Program. Program informational materials used in such activities shall be subject to § 272.4(b).

which pertains to bilingual requirements. Before FNS considers costs for such activities eligible for reimbursement at the fifty percent rate under Part 277, State agencies shall obtain FNS approval for the attachment to their Plans of Operation as specified in § 272.2(d)(1)(ix). In such attachments, State agencies shall describe the subject activities with respect to the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. State agencies shall update this attachment to their Plans of Operation when significant changes occur and report projected costs for this Program activity in accordance with § 272.2 (c), (e), and (f).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

8. In § 273.2:

- a. Paragraph (b) is revised in its entirety.
- b. Paragraph (c)(5) is redesignated as paragraph (c)(6) and a new paragraph (c)(5) is added.
- c. Paragraph (d)(1) is amended by adding two new sentences to end of the paragraph.
- d. The fourth sentence of paragraph (e)(2) is revised.
- e. A new paragraph (f)(1)(viii)(A)(6) is added.
- f. Paragraph (f)(5)(i), paragraph (f)(8)(i)(A), the first two sentences of paragraph (f)(8)(i)(C), and paragraph (f)(8)(ii) are revised.
- g. The last sentence of paragraph (g)(2) is amended by removing the phrase, "when required."
- h. The first sentence of paragraph (h)(1)(i)(C) is revised.
- i. The first and last sentences of the introductory text of paragraph (j) are revised, the first two sentences of paragraph (j)(1)(i) are removed and three new sentences are added in their place, and a new paragraph (j)(1)(v) is added.

The additions and revisions read as follows:

§ 273.2 Application processing.

(b) *Food Stamp application form.*—(1) *Content.* Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if

such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

(iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application;

(iv) A statement to be signed by each household member attesting, under penalty of perjury, to his or her citizenship or alien status (adults shall sign for household members under 18 years of age; however, if there are no adult members in the household, the applicant shall sign the statement for himself or herself and for all other members in the household who are under 18 years of age);

(v) A place on the front page of the application where the applicant can write his/her name, address and signature;

(vi) In plain and prominent language on the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative;

(vii) In plain and prominent language on the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section; and

(viii) In plain and prominent language on the front page of the application, notification that benefits are provided from the date of application.

(2) *Income and eligibility verification system (IEVS).* All applicants for food stamp benefits shall be notified at the time of application and at each recertification through a written statement on or provided with the application form that information available through the State income and eligibility verification (IEVS) will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. All applicants shall also be notified on the application form that the alien status of any household member may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information

received from INS may affect the household's eligibility and level of benefits.

(3) *Deviations.* All State agencies shall use an application form designated by FNS. FNS may approve a deviation from that form to accommodate the use of a combined PA/food stamp application form, the requirements of a computer system, or other exigencies for which the State agency can submit adequate justification, provided the form is brief, understandable to applicants and easy to use. State agencies may request assistance from FNS in the development of a brief, simply-written and readable application, including application forms which cover the Food Stamp Program and the Aid to Families with Dependent Children Program or the Medicaid Program.

(c) *Filing an application.* * * *

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter.

(d) *Household Cooperation.* (1) * * *

The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

(e) *Interviews.* * * *

(2) * * * These hardship conditions include, but are not limited to: illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(viii) *Disability.*

(A) * * *

(6) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide

proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

(5) *Responsibility of obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency shall assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall not require the household to present verification in person at the food stamp office. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application.

(8) *Verification subsequent to initial certification.* (i) *Recertification*—(A) At recertification the State agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. The State agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(C) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income, total medical

expenses or actual utility expenses which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(h) *Delays in processing.* * * *

(1) *Determining cause.* * * *

(i) * * *

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification.

(j) *PA, GA and categorically eligible households.* Households applying for public assistance (PA) shall be notified of their right to apply for food stamp benefits at the same time and shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. * * * Households in which all members are applying for State agency administered GA benefits shall be allowed to apply for food stamps at the same time they apply for GA benefits but shall not be considered categorically eligible for food stamps.

(1) *Applicant PA households.* (i) The application for PA shall contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility shall be contained in the PA form or shall be an attachment to it. The joint PA/food stamp 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, waives the notice of adverse action as specified by both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section.

(v) Households whose PA applications are denied shall not be required to file new food stamp applications but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

9. In § 273.8:

a. Paragraph (e)(5) is amended by adding one sentence to the end of the paragraph.

b. Paragraph (h)(1)(i) is amended by replacing the semicolon with a period and adding a new sentence to the end of the paragraph.

The additions read as follows:

§ 273.8 Resource eligibility standards.

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

(5) * * * Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(h) *Handling of licensed vehicles.*

(1) * * *

(i) * * * Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;

10. In § 273.9, a new sentence is added between the first and second sentences of paragraph (c)(1) to read as follows:

§ 273.9 Income and deductions.

(c) *Income exclusions* * * *

(1) * * * In-kind or vendor payments which would normally be excluded as income as specified in this section but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by the waiver of provisions of Federal law) shall also be excluded from income.

11. In § 273.10:

a. A new sentence is added between the second and third sentences of paragraph (d)(1)(i).

b. The fourth sentence of paragraph (g)(1)(i)(A) and the first sentence of paragraph (g)(1)(ii) are amended by adding the phrase, "(a toll-free number or a number where collect calls will be accepted for households outside the local calling area)" after the phrase, "the telephone number of the food stamp office".

The addition reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

(d) Determining deductions. * * * (1) Disallowed expenses. (i) * * * In addition, an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. * * *

12. In § 273.11, a new paragraph (a)(1)(v) is added to read as follows:

§ 273.11 Action on households with special circumstances.

(a) Self-employment income. * * * (1) Annualizing self-employment income. * * *

(v) Notwithstanding the provisions of paragraphs (i) through (iv) of this paragraph, households subject to MRRB who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income shall have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

13. In § 273.12:

- a. Paragraph (a)(1)(vi) is revised.
b. Paragraph (b)(1)(ii) is amended by removing the word "and" following the semicolon.
c. Paragraph (b)(1)(iii) is amended by replacing the period at the end of the sentence with a semicolon.
d. Paragraph (b)(1) is amended by adding two new paragraphs (b)(1)(iv) and (b)(1)(v).

The additions and revisions read as follows:

§ 273.12 Reporting changes.

(a) Household responsibility to report. (1) * * * (vi) Changes greater than \$25 in the total amount of allowable medical expenses.

(b) Report form.

(1) * * * (iv) The number of the food stamp office and a toll-free number or a number where collect calls will be accepted for households outside the local calling area; and

(v) A statement describing the changes in household circumstances contained in § 273.12(a)(1) that must be reported and a statement which clearly informs the household that it is required to report these changes.

14. In § 273.13, paragraph (a)(2) is amended by replacing the phrase "the telephone number" with the phrase, "the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area)".

15. In § 273.21:

- a. The introductory text of paragraph (c) and paragraph (c)(5) are revised.
b. A new sentence is added to the end of paragraph (f)(2)(i).
c. Paragraphs (h)(3)(i) and (h)(3)(ii) are amended by removing the word "medical."
d. Paragraph (h)(3)(iii) is redesignated as paragraph (h)(4) and a new paragraph (h)(3)(iii) is added.
e. Newly designated paragraph (h)(4) is amended by adding a heading after the designation of "(4)" to read, "Combined form."
f. Paragraph (i)(1) is amended by adding the phrase "changes in" before the words "utility expenses" and by adding the phrase "all allowable medical expenses (unless the household elects the option of reporting changes of more than \$25 in total allowable medical expenses)," in place of the phrase, "medical expenses."
g. Paragraph (i)(3) is revised.
h. Paragraph (j)(3)(iii)(B) is amended by adding the phrase "a change in" after the phrase, "does not verify."
i. Paragraph (j)(3)(iii)(C) is revised, paragraph (j)(3)(iii)(D) is redesignated as paragraph (j)(3)(iii)(E) and a new paragraph (j)(3)(iii)(D) is added.

The additions and revisions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(c) Information on MRRB. At the certification and recertification interview, the State agency shall provide the household with the following:

(5) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

(f) Calculating allotments for households not suffering serious hardship. * * *

(2) Income and deductions. * * * (i) * * * Except that, households which receive self-employment income from a farm operation monthly but incur irregular expenses to produce such self-employment farm income shall be given

the option to annualize the self-employment farm income and expenses over a 12-month period.

(h) The monthly report form. * * * (3) Reporting information. * * *

(iii) either all allowable medical expenses each month or changes of greater than \$25 in total allowable medical expenses.

(i) Verification. * * *

(3) The State agency may require the household to verify any other information on the monthly report. However, the State agency shall not require the household to verify such other information which has not changed since the last report unless the State agency believes the information is inaccurate, incomplete, outdated, or inconsistent with other casefile information.

(j) State agency action on reports.

(3) Incomplete filing. * * * (iii) * * *

(C) If the household which has elected to report allowable medical expenses monthly does not verify its monthly allowable medical expenses, the State agency shall not allow a deduction.

(D) If a household which has elected to report changes of greater than \$25 in allowable medical expenses does not verify a reported change, the State agency shall not allow a deduction.

PART 274—ISSUANCE AND USE OF COUPONS

15. In § 274.2, paragraphs (b)(2) and (b)(3) are revised and a new paragraph (b)(4) is added.

The addition and revisions read as follows:

§ 274.2 Providing benefits to participants.

(b) Newly-certified households. * * *

(2) Households certified under the normal processing timeframes. Households which apply for initial months benefits (as described in § 273.10(a)) during the last 15 days of the month who have completed the application and provided all required verification within 30 days of the date of application and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. State agencies may opt to provide both

months' benefits in one combined allotment or as separate allotments so long as they are provided at the same time and within the timeframe specified in § 273.2(g).

(3) *Households certified under the expedited service processing timeframes.* Households which apply for initial benefits (as described in § 273.10(a)) during the last 15 days of the month under the expedited service procedures in § 273.2(i) who have completed the application and provided all required verification within the 5-day expedited service time limit and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. State agencies may opt to provide both months' benefits in one combined

allotment or as separate allotments so long as they are provided at the same time and within the timeframe specified in § 273.2(i).

(4) *Households not entitled to combined allotments.* The provisions of paragraphs (b)(2) and (b)(3) of this section do not apply to households determined ineligible to receive benefits for the initial month of application or the next subsequent month or to households for which missing verification or postponed verification have not been provided. Households eligible for expedited service under § 273.2(i) may, however, receive benefits for the initial month under the verification standards set forth in § 273.2(i)(4). Additionally, in accordance with § 273.10(a)(iii)(C), benefits of less than \$10 shall not be issued under the provisions of paragraphs (b)(2) and (b)(3) of this section.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

16. In § 277.4, a new paragraph (f) is added to read as follows:

§ 277.4 Funding.

* * * * *
(f) The expenses (e.g. travel, lodging, meals) of persons working with the organizations which receive training and assistance pursuant to § 272.4(d)(2) are not allowable.

Appendix A to Part 277—[Amended]

17. In appendix A to Part 277, under Standards for Selected Items of Cost, paragraph C.(14) is removed.

Date: May 30, 1989.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

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