

Food and Nutrition Service, USDA

§ 272.3

specified in part 277 appendix A of the regulations.

(ii) No other changes to the Program fund budget require approval from FNS. Examples of changes which do not require Federal approval are: The use of State agency funds to accomplish program objectives over and above the State agency minimum share included in the approved Program budget; and the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(iii) The requirements of paragraph (f)(1)(i)(B) of this section may be waived by FNS provided that:

(A) No different limitation or approval requirement may be imposed; and,

(B) FNS shall not permit a transfer which would cause any Federal appropriation, or part, thereof, to be used for purpose other than those intended.

(2) *Authorized funds exceeding State agency needs.* When it becomes apparent that the funds authorized by the Letter of Credit will exceed the needs of the State agency, FNS will make appropriate adjustments in the Letter of Credit in accordance with part 277.

(3) *Method of requesting approvals.* When requesting approval for budget revisions, State agencies shall use the same format as the Budget Projection Statement used in the previous submission. However, State agencies may request by letter the approvals required by paragraph (f)(1)(i)(D) of this section.

(4) *Notification of approval or disapproval.* Within 30 days from the date of receipt of the request for budget revisions, FNS shall review the request and notify the State agency whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, FNS shall inform the State agency in writing as to when the decision will be made.

[Amdt. 156, 46 FR 6315, Jan. 21, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 272.3 Operating guidelines and forms.

(a) *Coverage of operating guidelines.* State agencies shall prepare and provide to staff responsible for administering the Program written operating procedures. In those States which have State regulations that outline these Operating Procedures, these are equivalent to Operating Guidelines. Other examples of Operating Guidelines are manuals, instructions, directives or transmittal memos. The following categories shall be included in the Operating Guidelines:

(1) Certification of households, including but not limited to:

(i) Application processing;

(ii) Nonfinancial eligibility standards;

(iii) Financial criteria and the eligibility determination;

(iv) Actions resulting from eligibility determinations;

(v) Determining eligibility of special situation households as specified in § 273.11;

(vi) Additional certification functions such as processing changes during certification periods and reporting requirements for households;

(vii) Lost benefits/claims against households;

(viii) Fair/fraud hearings;

(ix) A list of Federal and State energy assistance programs that qualify for the resource and income exclusions discussed in § 273.8(e)(14) and § 273.9(c)(11) and how these payments are identified as being eligible for the exemption;

(x) Work registration and employment and training requirements.

(2) Issuance, accountability, and reconciliation;

(3) The Performance Reporting System, including instructions or directives for conducting quality control and management evaluation reviews and the quality control sample plan;

(4) A description of the training program, including a listing of the organizational component which conducts training, to whom and how often training is provided;

(5) The fair/fraud hearing procedures if not included in the Certification Handbook.

§ 272.3

7 CFR Ch. II (1-1-05 Edition)

(6) The consultation process (where applicable) with the tribal organization of an Indian reservation about the State Plan of Operation and Operating Guidelines in terms of the special needs of members of the tribe and the method to be used for incorporating the comments from the tribal organization into the State Plan of Operations and Operating Guidelines.

(b) *Submittal of operating guidelines and forms.* (1) State agencies shall develop the necessary forms, except the Application for Food Stamps, and other operating guidelines to implement the provisions of the Food Stamp Act and regulations. In accordance with § 273.2(b) and § 273.12(b)(1) State agencies shall use the FNS-designed Application for Food Stamps or an FNS-approved deviation.

(2) State agencies shall submit their operating guidelines and forms and amendments to these materials to FNS for review and audit purposes simultaneous with distribution within the States.

(3) State agencies may request that FNS review and provide comments on their operating guidelines, forms and any amendments to these materials prior to distribution of the materials within the State.

(4) If deficiencies are discovered in a State agency's materials, FNS shall provide the State agency with written notification.

(c) *Waivers.* (1) The Administrator of the Food and Nutrition Service or Deputy Administrator for Family Nutrition Programs may authorize waivers to deviate from specific regulatory provisions. Requests for waivers may be approved only in the following situations:

(i) The specific regulatory provision cannot be implemented due to extraordinary temporary situations such as a sudden increase in the caseload due to the loss of SSI cash-out status;

(ii) FNS determines that the waiver would result in a more effective and efficient administration of the program; or

(iii) Unique geographic or climatic conditions within a State preclude effective implementation of the specific regulatory provision and require an alternate procedure; for example, the use

of fee agents in Alaska to perform many of the duties involved in the certification of households including conducting the interviews.

(2) FNS shall not approve requests for waivers when:

(i) The waiver would be inconsistent with the provisions of the Act; or

(ii) The waiver would result in material impairment of any statutory or regulatory rights of participants or potential participants.

(3) FNS shall approve waivers for a period not to exceed one year unless the waiver is for an on-going situation. If the waiver is requested for longer than a year, appropriate justification shall be required and FNS will determine if a longer period is warranted and if so, the duration of the waiver. Extensions may be granted provided that States submit appropriate justification as part of the State Plan of Operation.

(4) When submitting requests for waivers, State agencies shall provide compelling justification for the waiver in terms of how the waiver will improve the efficiency and effectiveness of the administration of the Program. At a minimum, requests for waivers shall include but not necessarily be limited to:

(i) Reasons why the waiver is needed;

(ii) The portion of caseload or potential caseload which would be affected and the characteristics of the affected caseload such as geographic, urban, or rural concentration;

(iii) Anticipated impact on service to participants or potential participants who would be affected;

(iv) Anticipated time period for which the waiver is needed; and

(v) Thorough explanation of the proposed alternative provision to be used in lieu of the waived regulatory provision.

(5) Notwithstanding the preceding paragraphs, waivers of the certification period timeframes as described in § 273.10(f) may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 3(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(6) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 5(f) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(7) Notwithstanding the preceding paragraphs, waivers may be granted by the Administrator of the Food and Nutrition Service or the Deputy Administrator for Family Nutrition Programs as provided in section 6(c) of the Act. Waivers authorized by this paragraph are not subject to the public comment provisions of § 272.3(d).

(d) *Public comment.* State agencies shall solicit public input and comment on overall Program operations as State laws require or as the individual State agency believes would be useful.

[Amdt. 156, 46 FR 6315, Jan. 21, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 272.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 272.4 Program administration and personnel requirements.

(a) *Merit personnel.* (1) State agency personnel used in the certification process shall be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission under section 208 of the Intergovernmental Personnel Act of 1970.

(2) State agency employees meeting the standards outlined in paragraph (a)(1) of this section shall perform the interviews required in § 273.2(e). Volunteers and other non-State agency employees shall not conduct certification interviews or certify food stamp applicants. Exceptions to the use of State merit system personnel in the interview and certification process are specified in § 273.2(k) for SSI households, § 272.7(d) for households residing in rural Alaska, and part 280 for disaster victims. State agencies are encouraged to use volunteers in activities such as outreach, prescreening, assisting applicants in the application and certification process, and in securing needed

verification. Individuals and organizations who are parties to a strike or lockout, and their facilities, may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the State agency, coupon issuers, coupon bulk storage points, and Federal employees involved in administration of the program shall be permitted access to food coupons, ATP's, or other issuance documents.

(b) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual program information and certification materials, and staff or interpreters as specified in paragraphs (b) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language;

(2) The State agency shall provide materials used in Program informational activities in the appropriate language(s) as follows:

(i) In project areas with less than 2,000 low-income households, if approximately 100 or more of those households are of a single-language minority;

(ii) In project areas with 2,000 or more low-income households, if approximately 5 percent or more of those households are of a single-language minority; and

(iii) In project areas with a certification office that provides bilingual service as required in paragraph (b)(3) of this section.

(3) The State agency shall provide both certification materials in the appropriate language(s) and bilingual staff or interpreters as follows:

(i) In each individual certification office that provides service to an area containing approximately 100 single-language minority low-income households; and

(ii) In each project area with a total of less than 100 low-income households if a majority of those households are of a single-language minority.

(A) Certification materials shall include the food stamp application form,