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Food and Nutrition Service

7 CFR Part 272 et al.

Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104–193, as Amended by Public Laws 104–208, 105–33 and 105–185; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274, and 277

[Amendment No. 388]

RIN 0584–AC40

Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104–193, as Amended by Public Laws 104–208, 105–33 and 105–185

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes a proposed rule published February 29, 2000, amending Food Stamp Program (Program) regulations to implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and subsequent amendments to these provisions made by the Omnibus Consolidated Appropriations Act of 1996 (OCAA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA). This action finalizes options related to matching activities, fair hearings and recipient services. This action finalizes provisions which would increase State agency flexibility in processing applications for the Program and allow greater use of standard amounts for determining deductions and self-employment expenses. This action also finalizes revisions to the requirements for determining alien eligibility and the eligibility and benefits of sponsored aliens, and requires certain transitional housing payments and most State and local energy assistance to be counted as income, excludes the earnings of students under age 18 from income, and requires proration of benefits following any break in certification.

Other provisions of this final action establish ground rules for implementing the Simplified Food Stamp Program, allow State agencies options to issue partial allotments for households in treatment centers, count all, part, or, in some cases, none of the income of an ineligible alien in determining the benefits of the rest of the household, issue combined allotments to certain expedited service households, and certify elderly or disabled households up to 24 months and other households up to 12 months. The action also finalizes several changes to existing regulations in response to the President's reform initiative to remove overly prescriptive, outdated, and unnecessary regulatory provisions.

The rule also makes final the proposals to add vehicles to the assets which may be covered under the inaccessible resources provisions of the Food Stamp Act of 1977, clarifies the procedures for shortening or lengthening a certification period, and makes a change to exclude from income on-the-job training payments received under the Summer Youth Employment and Training Program as required by Section 702 of the Workforce Investment Act (Pub. L. 102–367, originally known as the Job Training Reform Amendments of 1992).

DATES: *Effective Date:* This final rule is effective January 20, 2001, except for the amendment to § 273.2(b)(4)(iv) which is effective August 1, 2001, and the amendments specified in items 2 and 3 below which are not effective until Office of Management and Budget (OMB) approval of an associated information collection burden. The Food and Nutrition Service will publish a document in the **Federal Register** announcing the effective date of these amendments after approval of the information collection requirements by OMB.

Implementation Dates:

1. State agencies may implement the following amendments at their discretion at any time on or after the effective date: § 272.8; § 272.11(a); § 273.2(f)(9)(i); § 273.2(f)(10); § 273.2(j)(2)(ii); § 273.9(d)(6)(i); § 273.9(d)(6)(iii)(E); § 273.11(a)(3)(v); § 273.12(a)(1)(vii); § 273.25; and § 277.4(b).

2. State agencies may implement the following amendment at their discretion at any time on or after the effective date established by OMB approval of the associated information collection burden: § 273.12(f)(4).

3. State agencies must implement the following amendments no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date: § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3).

4. State agencies must implement the amendment to § 273.2(b)(4)(iv) no later than August 1, 2001, for all households newly applying for Program benefits.

5. State agencies must implement all other amendments no later than June 1, 2001, for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date.

FOR FURTHER INFORMATION CONTACT: Patrick Waldron, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 800, Alexandria, Virginia, 22302, (703) 305–2805 or e-mail at Patrick.Waldron@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. FNS has considered the impact on State agencies. For the most part, this rule deals with changes required by law, and implemented by law in 1996. However, the Department has made discretionary changes to preserve client protections that existed in the regulations prior to the effective date of this rule and to facilitate the participation of eligible low-income households, particularly households with wage earners. These changes primarily affect food stamp recipients. The effects on State agencies are moderate. In some instances, the changes relieve State agencies of administrative burdens. In other instances, the changes result in modest increases in administrative burdens. However, we balanced these increases in State agency burden against the need to preserve and enhance Program access to eligible low-income families and individuals. This rule is intended to have preemptive effect on any State law that conflicts with its provisions or that would otherwise impede its full implementation. Generally, PRWORA and other federal statutes required many of the changes made in this rule, and made most of them effective on enactment and all of them effective prior to the publication of this rule. FNS is not aware of any case where the discretionary provisions of the rule would preempt State law.

Prior Consultation With State Officials

Before drafting this rule, we received input from State agencies at various times. Because the Program is a State-administered, federally funded program,

our regional offices have formal and informal discussions with State and local officials on an ongoing basis. These discussions involve implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other Program rules. In addition, FNS officials attend regional, national, and professional conferences to discuss issues and receive feedback from State officials at all levels. Lastly, the comments on the proposed rule from State officials were carefully considered in drafting this final rule.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

The information collection requirements affected by the issuance of this final rule are or will be contained within the following OMB numbers, 0584–0064, 0584–0083, and 0584–0496. Some requirements are already approved. There are others about which we are seeking comment. Those will not become effective until approved by OMB.

Current Information Burden (ICB) Approval

The information collection requirements governing State agency administration and management described in the final rule at Part 272 have been eliminated, made optional or significantly modified as a result of implementation of certain provisions of the PRWORA amending the Program. Therefore, current reporting and record keeping burden associated with Part 272, previously approved by OMB and assigned control numbers 0584–0064 and 0584–0083, either remains the same or there is no longer an information collection burden associated with the provisions discussed in the preamble to this rule. OMB 0584–0064 also includes information collection burden associated with Part 273.

The information collection requirements described in § 273.2, § 273.12, § 273.14(b), and § 273.21 of this final rule governing the application, certification, and ongoing eligibility of food stamp households have been approved under OMB No. 0584–0064. The information collection requirements described in § 273.9(d) and § 273.11(b) of this final rule governing administration of the homeless shelter deduction, establishing and reviewing standard utility allowances, and establishing methodologies for offsetting the cost of producing self-employment income have been approved under OMB No. 0584–0496.

Results From 60 Day Comment Period

FNS has submitted the above-noted ICB packages to OMB for renewal and they will remain in effect until further notice. We received no comments on the ICB mentioned in the proposed rule. As discussed below, the final rule contains additional reporting burden which must receive OMB approval before the regulatory amendments become effective. The associated amendments are § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); § 273.12(c)(3), and § 273.12(f)(4).

Additional Burden

As a result of the numerous public comments on the proposed rule, proposals to Part 273 in the rule were either modified or withdrawn. These changes affect the ICB approved under OMB No. 0584–0064 and add new collection burdens not previously published. The additional ICB identified as a result of this final rule includes: (1) Notice of Missed Interview; (2) the determination of indigence for eligible sponsored aliens subject to deeming of sponsor income; (3) the notification of households about face-to-face interview waivers; (4) notifications to households that apply to both food stamps and TANF that (A) time limits of other programs do not apply to the Food Stamp Program; and (B) households are encouraged to continue the food stamp application process even if the application for TANF benefits is withdrawn; (5) the State agency's responsibility to forward misfiled applications; (6) the Transition Notice for use in States electing to provide the Transitional Benefits Alternative; and (7) the Request for Contact. The number of initial food stamp applications and recertifications received in 1999 according to the FNS National Databank (8,139,774 and 9,992,025 respectively) will be used for these estimates. The combined total of the received applications is therefore 18,131,799 for 1999.

In accordance with the Paperwork Reduction Act of 1995, FNS is submitting for public comment the change in the ICB that results from the adoption of the rule associated with the application, certification, and ongoing eligibility of food stamp households. FNS is incorporating the additional data collection activities governing the application, certification, and ongoing eligibility of food stamp households in OMB No. 0584–0064.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and the information to be collected; and (c) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send one copy of comments and/or request for copies of this information collection to: Patrick Waldron, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302–1594, 703.305–2805. Comments may also be faxed to Mr. Waldron at 703.305.2486. FNS prefers to receive comments in the electronic medium. Our Internet address is *FSPHQ-WEB@fns.usda.gov.* In the subject box, please indicate ''NCEP ICB comments''. Only comments received prior to 5:00 p.m. EST on January 19, 2001, will be given consideration.

Title: Notice of Missed Interview.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: Current rules require State agencies to reschedule missed interviews. We are removing the requirement that the State agency reschedule a missed interview. However, we are adding a requirement to § 273.2(e)(3) that the State agency must send a notice to a household that misses its interview appointment indicating that it missed the scheduled interview and informing the household that it is responsible for rescheduling the interview.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding the number of missed interviews in any given time frame. Our initial inclination was to suggest that 25 percent of all initial applications and recertifications miss an interview. Comments and/or

data regarding this estimated percentage are encouraged.

Estimated Number of Responses per Respondent: We are asking that States provide reasonable estimates regarding this burden estimate. We also assume that the same 25 percent receive one response per respondent per year.

Estimate of Burden: Household burden—It is difficult to estimate the burden to the household, since the manner in which the household responds to the notice will vary considerably. The household may call the local food stamp office to reschedule, arrive in person at the office to reschedule, write a reply or send an e-mail. The amount of burden time on the household depends on the manner in which the household responds and the manner in which the State will accept responses to the Notice of Missed Interview (NOMI). Therefore, we estimated the household burden at approximately 10 minutes per notice. In addition, some households will not respond to the notice of a missed interview. We estimate that 25 percent will not respond to the notice. We request that States provide information regarding the approximate number of missed interviews per month or per year. State burden—due to the automation of most State agencies, we assume the estimated burden to issue a NOMI will be 15 seconds per notice plus a one-time adjustment of forms, which is estimated at 20 hours per form.

Estimated Total Annual Burden on Respondents: Household burden—We estimate that the total annual burden will be 75,575 hours (1,813,799 total applications × 0.25 × 10 min/60 min = 75,575 hours). State burden—Since we do not know the estimated number of missed interviews per State, we are requesting comments from the State agencies to provide a better picture of the burden such a notice will cause. To issue a notice, we are calculating the 10 seconds to equal 0.00277 hours. (10 seconds = 10 sec/60 sec per min = 0.16667 min/60 min per hour = 0.00277 hours). The estimated total annual burden on the States would be 1,256 hours (1,813,799 total applications × 0.25 × 0.00277 hours = 1,256 hours).

In addition, we anticipate a one-time adjustment of forms for the State agencies. Due to computerized systems, we anticipate each State agency will require an additional 20 work hours to revise the forms. The total burden would then be 1060 hours (20 hours × 53 State agencies = 1,060 hours).

The anticipated total burden on the State agencies would then be 2,316 hours (1,256 + 1,060 = 2,316).

Title: Determination of Indigence.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: Under the final rule, § 273.4(c)(3)(iv) exempts certain eligible sponsored aliens from the provisions requiring deeming of sponsor income and resources if the sponsored alien is indigent. Under the final rule, an eligible sponsored alien is indigent if the sum of all the sponsored alien's household's income and any assistance the sponsor or others provide (cash or in-kind) is less than or equal to 130 percent of the poverty income guideline. To comply with the statute, and unlike a normal determination of income for food stamp eligibility purposes, the indigence determination includes an estimation of the value of in-kind assistance the sponsor and others provide. The State agency would determine the amount of income and other in-kind assistance provided in the month of application. Each indigence determination is good for 12 months and is renewable for additional 12-month periods. If the sponsored alien is indigent, then the normal food stamp budgeting process would begin. The State agency counts in the food stamp budget whatever actual cash contributions the sponsor and others provide.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding the number of indigent sponsored aliens in any given time frame. The Department believes this is a small group and data have not been collected to determine the exact number of individuals involved. We believe that only eligible lawful permanent residents who are Hmong or Highland Laotians or individuals who have a U.S. military connection are potentially subject to the sponsor deeming provisions of the Program. In as much as the provision applies only to sponsored aliens who are sponsored by an individual, and not an organization, and for whom an affidavit of support was executed on or after December 19, 1997, we believe there may be less than 500 individuals who are subject to this provision and who are food stamp eligible.

Estimated Number of Responses per Respondent: We anticipate only one response per respondent per year.

Estimate of Burden: Household burden—We believe that the burden on the household will not change. State burden—We estimate the burden on the State to be approximately 10 minutes for collecting additional information to determine the value of in-kind assistance provided by the sponsor and/or others and to determine the indigence of the applicant household.

Estimated Total Annual Burden on Respondents: Household burden—We believe no additional burden is added to the household. State burden—We estimate the total burden to be (10 min/60 min × 500 × 1/year) 83 additional burden hours per year. Comments and/or data regarding this estimated percentage are encouraged.

Title: The Notification of Households About Face-to-Face Interview Waivers.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: One time requirement to modify forms.

Abstract: Under the final rule the eligibility worker must advise each applicant of the possibility waiving a face-to-face interview for a telephone interview. Under the previous rule, applicant households had to request information on the possibility of waiving the face-to-face interview.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding this burden. Comments and/or data regarding this estimated percentage are encouraged. We are initially estimating that each household that applies for food stamps or applies for recertification will be affected. In 1999, there were 8,139,774 initial applications and 9,992,025 recertification applications. Combined, the total number of applications in 1999 was 18,131,799. Therefore, our initial estimate in the number of respondents affected is 18,131,799.

Estimated Number of Responses per Respondent: We estimate one response per application, for a total estimate of 18,131,799 per year.

Estimate of Burden: Household burden—We believe this does not affect the burden on the household. State burden: We estimate 10 seconds to notify each applicant household.

Estimated Total Annual Burden on Respondents: Household burden:—We believe this will not affect the burden on the applying households. State burden—This totals to 50,366 hours per year for the States [(10 seconds/60)/60 × 18,131,799].

Title: Notification of Households That Apply for Both Food Stamp Benefits and TANF That: Time Limits of Other Programs do not Apply to the Food Stamp Program; and the Encouragement of Households To Continue the Food Stamp Application Process Despite Requirements for Other Programs and/or Actions of Other Programs.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from approval date.

Type of request: New data collection.

Abstract: Time limits—The final rule requires the State agency to inform households that receiving food stamps will have no bearing on any other program's time limits. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits; and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. Encouragement—The final rule provides that if the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall in no way try to discourage households from applying for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

Number of Additional Respondents: This provision applies only to applicants who apply for both TANF and food stamps.

Estimated Number of Responses per Respondent: We estimate one response per household that applies for both Food Stamp benefits and TANF.

Estimate of Burden: Household burden—We believe there is no burden to the household for this provision. State burden—We estimate 10 seconds to notify of the two issues to each applicant household that has applied to both TANF and food stamps.

Estimated Total Annual Burden on Respondents: Household burden—We believe there is no burden to the household in this provision. State burden—We are requesting comments from the State agencies on the burden this provision imposes on the State agencies. The National Databank indicated 2.8 million households were receiving food stamp benefits and PA benefits in January 1999. Therefore, we estimate that the total annual burden is 7,917 hours (2,800,000 × .00277 hours + 7,917) [10/60 = .16667 min. = .16667/60 = .00277 hours].

Title: The State Agency Responsibilities for Misfiled Food Stamp Applications.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New responsibility.

Abstract: This provision of the final rule would: (1) Continue to allow the State agency to require households to file an application at a specific certification office or allow them to file an application at any certification office within the State or project are; (2) require that if an application is received at an incorrect office, the State agency advise the household of the address and telephone number of the correct office (3) require the State agency to forward an application received at an incorrect office to the correct office not later than the next business day; and (4) remove the requirement currently located in the third sentence of § 273.2(c)(2)(ii) that the State agency inform the household that its application will not be considered filed and the processing standards must not begin until the application is received by the appropriate office.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding this burden. Comments and/or data regarding this estimated percentage are encouraged. Since most project areas have only one office, we believe the new rule will affect only large project areas with multiple offices. Further, within that group of project areas, only those which limit applications taken to a specific geographic area or a specific caseload characteristic will come under the rule. Therefore, we are estimating approximately 30 misfiled applications per month in each of the 100 counties. This totals approximately 36,000 misfiled applications per year.

Estimated Number of Responses per Respondent: We believe this occurs once per year per misfiled application.

Estimate of Burden: Household burden—We do not believe this incurs additional burden on the household. State burden—This burden time is dependent on the method in which the misfiled application is forwarded. We believe this burden would take the State approximately 10 minutes per misfiled application if the State agency faxed the application one page at a time.

Estimated Total Annual Burden on Respondents: Household burden—We believe there is no burden to the household for this provision. State burden—This would take an additional 6,000 burden hours per year (10 min/60 min × 36,000 = 6000 hours).

Title: The Transition Notice.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: The final rule provides an optional procedure for providing TANF leavers with "transitional food stamp benefits," much in the same way families receive transitional Medicaid after leaving TANF rolls. Under the new policy the State agency would freeze food stamp benefits of households leaving TANF rolls for up to 3 months, depending on the period of time since the household's last certification. Near the close of the transition period, the State agency would act on information collected from the household, either adjusting the benefit level, or closing the household's food stamp case because it is no longer eligible or it has failed to provide sufficient information to continue its eligibility for the Program. In some cases, the State agency would have to conduct a full recertification of eligibility, if it was not possible to extend the household's certification period beyond the statutory maximum for its circumstances. This provision in the final rule will require State agencies to develop a new form; however, State agencies may modify existing forms to comply with the requirement.

Number of Respondents: This provision in the final rule only affect families leaving TANF. Those affected households would receive a "Transition Notice" (TN) advising the household that due to the closure of cash assistance, the food stamp allotment is frozen at the pre-TANF closure amount. In addition, the TN must advise the household that to continue participating in the Program, they must report changes to the State agency within a specified time frame, or report to a recertification interview, as directed in the TN.

Estimated Number of Responses per Respondent: Household burden—We believe there is no additional burden to the household for this provision. State burden—We do not anticipate additional burden on the State agencies in issuing this Transitional Notice since this burden replaces that of the Notice of Expiration (NOE) in such cases.

We estimate that about 15 State agencies will implement TBA in the next 3 years. The total annual burden on the State for developing the form is estimated to be a one-time adjustment of 20 hours to develop the form and process. This totals 300 hours (20 × 15 State agencies = 300.

Title: The Request for Contact.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: Another new provision in the final rule requires the State agency

to obtain information or clarify information from the household during the certification period. The new form, request for contact (RFC), is necessary in situations where the household has reported a change, but the information is so unclear that the State agency cannot readily determine its effect on the household's benefit amount. The final rule places the burden of clarifying an issue on the household. The RFC informs the household of the information needed to continue its current certification. Since the State agency cannot readily determine a household's benefit amount without the clarification or missing information, then the information is considered necessary. The State agency must issue a written RFC that clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances. The RFC affords the household at least 10 days to respond, either by telephone or by correspondence, as the State agency directs. The RFC also indicates the consequences if the household fails to respond to the RFC. Depending on the household's response to the RFC, the State agency must take appropriate action, if necessary, to close the household's case or adjust the household's benefit amount. This is a new form and will be added to the burden package calculation.

Number of Additional Respondents: We estimate that 25 percent of the change reports (12,375,185 × 0.25 = 343,796) will result in a request for contact.

Estimated Number of Responses per Respondent: We also estimate that on average, one request for contact will be issued in a 12-motnth period.

Estimate of Burden: Household burden—It is difficult to estimate the burden to the household, since the manner in which the household responds to the RFC varies. The household may call the local food stamp office to report information, arrive in person at the office to report, write a reply or send an email. The amount of burden time on the household depends on the manner in which the household responds and the manner in which the State will accept. Therefore, we estimated the household burden at approximately 10 minutes per notice. In addition, some households will not respond to the RFC. We estimate 25 percent will not respond to the notice. State burden—Due to the automation capabilities of most State agencies, we estimate the burden on the State to issue the RFC approximately 2 minutes per request. We do not anticipate additional burden on the State agencies in issuing this RFC since this burden is already calculated as part of the NOAA process.

The total annual burden on the State for developing the form is estimated at a one-time adjustment of 20 hours to develop the form and process.

Estimated Total Annual Burden on Respondents: Household burden—We estimate that 25 percent of the change reports (1,375,185 × 0.25 = 343,796) will result in a request for contact. Since we believe 25 percent will not respond to the RFC, the remaining households who do respond are anticipated to be approximately 75 percent of the RFCs issued. We calculate the estimated total annual burden to the households will be 42,975 hours (343,796 RFC/year × 0.75 × 10 min/60 min per hour = 42,975 hours). State burden—We estimate the annual burden would be 11,460 hours (343,796 × 1 × 2/60) to issue the RFC, assuming that it will take on average 2 minutes or 0.0333 hours to issue the RFC.

Added to the annual burden are the 20 hours per form for each State agency to create the forms. This totals 1,060 hours (20 × 53 = 1,060 hours). Therefore, the combined total of the annual burden on the State totals 12,520 hours (1,060 + 11,460 = 12,520 hours).

Executive Order 12988

We have reviewed this rule under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. We do not intend this rule to have retroactive effect unless so specified in the ''Dates'' paragraph of this preamble. Challengers must exhaust all applicable administrative procedures, prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, or to the private sector in the aggregate of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the URMA.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individuals participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes required to be implemented by law, have been implemented.

All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.'' Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (Food Stamp Act or the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints must be processed in accordance with 7 CFR part 15. Where State agencies have

options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Regulatory Impact Analysis

Need for Action

We need to take this action with respect to the Program to implement provisions of Pub. L. 104–193 (PRWORA) and subsequent amendments, which would: (1) Remove specific requirements for State agency processing of food stamp applications; (2) revise requirements for determining the eligibility of aliens; (3) count as income certain State and local energy assistance; (4) allow State agencies to count all or part, or none of an alien's income in determining the benefits of the rest of the household; (5) allow State agencies to certify households consisting entirely of elderly or disabled members up to 24 months; (6) exclude the earnings of students under age 18; (7) make use of a homeless shelter deduction optional; (8) allow State agencies to mandate use of a standard utility allowance if they have at least one standard that includes heating and cooling costs and one that does not; (9) eliminate the exclusion for vendored transitional housing payments for homeless households; (10) allow use of standard amounts in determining self-employment expenses; (11) make optional the issuance of combined allotments to expedited service households that apply after the 15th of the month; (12) allow State agencies to issue partial allotments to households in treatment centers; (13) require proration of benefits following any break in certification; (14) allow State agencies to accept an oral withdrawal from the household for a fair hearing; (15) revise requirements for producing or displaying nutritional education materials; (16) eliminate mandated training standards; (17) eliminate the requirement for reviewing and reporting on office hours; (18) revise mail issuance requirements in rural areas; (19) prohibit Federal reimbursement for recruitment activities from being approved as part of a State agency's optional Outreach plan; (20) make optional rather than mandatory the use of the Income Eligibility and Verification System and the Systematic Alien Verification for Entitlements match programs; and (21) establish ground rules for implementing the Simplified Food Stamp Program (SFSP). In addition, we need to take this action to implement Departmental initiatives to revise the policy for counting the resource value of licensed vehicles, to provide an optional transitional benefit for TANF leavers, to provide an optional alternative reporting system of semi-annual reporting for households with earnings, and to make a change to exclude from income on-the-job training payments received under the Summer Youth Employment and Training Program as required by Section 702 of the Workforce Investment Act.

Legislative Provisions

Budget Impact

This rule implements provisions from two laws, PRWORA and AREERA. Using assumptions from the 2001 Budget Agency Mid-session estimate, we estimate the total Food Stamp Program budget impact of this rule in Fiscal Year (FY) 2000 to be −$617 million. We estimate the 5 year budget impact for FY 2000 through FY 2004 to be −$1.932 billion.

The legislative provisions have a budget impact in FY 2000 of −$622 million and a 5 year budget impact for FY 2000 through FY 2004 of −$3.002 billion.

The legislative savings primarily stem from the provisions of PRWORA that make many aliens ineligible to participate (section 402) and the provision that requires counting as income for food stamp purposes most State and local energy assistance (section 808). The Program realizes smaller savings from the following provisions of PRWORA: section 807, earnings of children; section 809, standard utility allowances; section 811, transitional housing payments; and section 827, proration of benefits at recertification. The SFSP authorized under section 854 may result in savings or increased Program costs with respect to individual households; however, the net impact of SFSP implementation must be cost neutral.

Provisions in the rule that have negligible budget impact are not discussed in this analysis.

Section 402—Alien Eligibility

Section 402 of the PRWORA significantly reduces the number of legal aliens who are eligible for food stamps. Effective August 22, 1996, for applicants and August 22, 1997, for current recipients, many aliens legally admitted for permanent residence who were previously eligible became ineligible. The exceptions are those admitted as refugees, asylees, Cubans, Haitians, Amerasians, and those who have had removal withheld who retain eligibility for the first 5 years (later changed to 7 years by AREERA) after admission; lawful permanent residents who have earned or been credited with at least 40 quarters of coverage as defined by the Social Security Administration; and those who are serving or have served in the U.S. armed forces and their spouses and children. Effective November 1, 1998, AREERA made certain Hmong, Highland Laotians, and American Indians born outside of the U.S. eligible for food stamps. It also made aliens who were lawfully living in the U.S. on August 22, 1996, eligible for food stamps if they are under 18, or are disabled, or were age 65 or older on August 22, 1996.

Those aliens who lost eligibility will contribute to smaller State agency caseloads. However, determining the eligibility of individuals will be more complicated. For certain categories of aliens, State agencies will have to determine when the individuals were admitted. For other categories, State agencies will have to obtain information regarding the applicant's work history. Thus, there may be no significant savings in caseworker time.

In FY 2000, without taking into account the cost of restoring benefits to selected aliens through AREERA, we estimate that the budget impact would have been −$440 million. The budget impact for the 5-year period FY 2000–FY 2004 is −$2.275 billion. We estimate that in 1998, approximately 838,000 participants lost eligibility with an average benefit loss of $23 a month and another 950,000 people remained eligible but lost an average of $31 a month. About 80,000 people living in households with ineligible aliens received a slightly larger per person benefit for those still eligible and participating in the Program, on average $12 per month. This is because of economies of scale in the allotment tables which are by household size, *i.e.,* a two-person household based on no income would receive a larger per person allotment than a three-person household based on no income. It is important to realize that all of these ''gainers'' lived in households where the total food stamp benefit available to the household declined.

Based on information from a simulation model using 1996 Food Stamp Quality Control data, together with information from the Immigration and Naturalization Service (INS) on immigration and naturalization patterns and the Survey of Income and Program Participation (SIPP) on the work histories of aliens, we estimate that 20 percent of permanent residents meet the 40-quarters work exemption. Using information from the Current Population Survey on the veteran status

of aliens, we estimate that less than 1 percent meet the veteran's exemption. Moreover, because applications for naturalization have increased dramatically over the last 2 years, we anticipate that naturalizations will increase through FY 2001, reducing somewhat the number of persons losing eligibility and benefits through that time period compared to FY 1998.

The enactment of AREERA on November 1, 1998 restored benefits to an estimated 175,000 legal immigrants when fully implemented in FY 2002, with a budget impact of $85 million in 2000 and $665 million for the five-year period 2000–2004. At the time of AREERA's passage, the estimate of immigrants that would receive restored benefits was higher (225,000), but changes in the economy have caused us to revise those estimates downward.

PRWORA does not address how or whether to count the income or resources of the aliens made ineligible by PRWORA for purposes of determining eligibility or allotment amounts for the rest of the household. Alternatives were considered including counting ineligible aliens' resources and all income; counting resources and a pro-rated share of income; not counting the ineligible aliens' income, but capping the resulting allotment for the eligible members at the allotment a similarly situated all citizen household would receive; or counting neither income nor resources. The alternative chosen under the proposed rule would be to allow the State agency to pick one State-wide option for determining the eligibility and benefit level of households with members who are aliens made ineligible under PRWORA. State agencies may either: (1) Count the resources and a pro-rated share of the ineligible aliens' income; or (2) count the resources, not count the ineligible aliens' income, but cap the resulting allotment for the eligible members at the allotment amount the household would receive were it not for the PRWORA eligibility restrictions.

Using a simulation based on the 2000 baseline version of the 1996 QC Minimodel, we estimate that the option of excluding the income of PRWORA-ineligible aliens increases costs by an estimated $2 million for FY 2001 and $23 million for FY 2000 through FY 2004. (This cost is included in the total for Departmental initiatives.) These estimates take into account current State practices and an expected shift of some States from the first option.

Section 807—Earnings of Children

This provision revises the current exclusion from income of the earnings of elementary or secondary school students under age 22 to exclude the earnings of these students only if they are under 18. Based on the 1996 Quality Control data, it is estimated that the benefits of approximately 2,700 students will be reduced an average of $62 per month. FY 2000 budget impact is estimated at −$2 million and a 5-year budget impact of −$12 million.

Section 808—Energy Assistance

This provision eliminates the exclusion from income of most State and local energy assistance payments. Federal, State, or local one-time payments for weatherization and replacement or repair of heating or cooling devices are excluded. All federal energy assistance payments are excluded, except those provided under Title IV–A of the Social Security Act. State agencies are required to count as income the portion of the public assistance grant previously excluded as energy assistance. Using 1996 food stamp QC data on the number of AFDC/FSP households in each State and 1996 Green Book data on the average AFDC disregard for state-provided energy assistance, we estimated that benefits for approximately 3.959 million participants will be reduced, with each person losing an average of $4.42 a month. This results in a budget impact of −$210 million for FY 2000 and a 5-year budget impact of −$1.05 billion.

Section 811—Transitional Housing Payments

This provision removes the statutory exclusion from consideration as household income any State PA or GA payments made to a third party on behalf of a household residing in transitional housing for the homeless. State agencies may continue to exclude PA housing payments from income if they are emergency or special payments over and above the regular grant or are provided for migrant or seasonal farmworker households while they are in the job stream. GA housing payments may be excluded if they are provided by a State or local housing authority, are emergency or special payments, or the assistance is provided under a program in a State in which no GA payments may be made directly to the household in the form of cash. State agencies will have to notify affected households that their benefits will be reduced.

Several States had been renting hotels to house PA households and the additional value of this ''welfare hotel'' benefit was being excluded from income in determining food stamp benefits. Based on estimates derived from data on AFDC and shelter payments made to the number of food stamp households estimated to be living in welfare hotels, approximately 76,000 recipients will lose benefits, for a budget impact of −$10 million in FY 2000 and a 5-year budget impact of −$50 million. The average benefit loss per person is about $11 a month.

Section 809—Standard Utility Allowances

This provision allows State agencies to mandate use of a standard utility allowance that includes heating or cooling costs, provided the State agency has another standard allowance that does not include heating or cooling costs and the mandatory standards will not increase Program costs. The PRWORA also provides that in a State that does not choose to make standards mandatory, households are allowed to switch between actual expenses and a standard only at recertification.

The rule provides requirements for a nonheating/cooling standard and would require State agencies to provide FNS with sufficient data to determine whether or not the State agency's proposed standards are cost-neutral. The rule also provides that elderly or disabled households certified for 24 months may switch at the 12-month point when the State agency is required to contact the household. The State agency would be required to allow households a choice between using actual expenses or a standard when they move and incur shelter expenses. The rule also would allow households in private rental housing to use a standard allowance that includes heating or cooling costs if they incur an expense for heating or cooling separately from their rent. Many of these households are currently entitled to the standard because they receive Low-Income Home Energy Assistance (LIHEAP) payments. Households in public rental housing that incur only the cost of excess usage are prohibited by the Food Stamp Act from receiving a heating or cooling standard.

The provision of the PRWORA allowing mandatory utility standards would increase State agency flexibility and reduce the time needed to calculate the shelter expenses of households which previously claimed actual costs. Savings result from two factors: (1) If a State mandates a standard, households with shelter costs higher than the SUA would no longer be allowed to claim actual costs; and (2) households will no longer be allowed to switch between the SUA and actual costs one additional time during each 12-month period.

Using a simulation model based on 1994 data from the Survey of Income

and Program Participation (SIPP), and adjusting for the fact that only five States (Delaware, Louisiana, Michigan, North Dakota, and Wyoming) with only seven percent of the caseload initially implemented this option, we estimate that the benefits of approximately 141,000 people were reduced in 1998 for an average loss of a little more than $5 a month, and 833 people lost eligibility for an average monthly loss of a little more than $11. We estimated the total budget impact for these States to be −$10 million.

We assume that more States will implement this provision, once they turn their attention from implementing TANF. We estimate that in 5 years, States that account for 28 percent of total benefit issuance will have opted for required use of the SUA. Under these assumptions, the total budget impact is −$20 million in FY 2000 and −$155 million over 5 years. By FY 2004, slightly over 3,000 people may lose eligibility.

Section 818—Treatment of the Income of Ineligible Aliens

This rule would implement the provision which allows State agencies to elect to count either all or part of an ineligible alien's income if the alien is in a category that was ineligible *prior* to PRWORA when calculating the eligibility and benefits of the other individuals in the household. These aliens are primarily aliens admitted under color of law, those without documentation to establish eligible status, and those temporarily residing in the country legally, such as diplomats and students. (Treatment of the income and resources of the classes of aliens made ineligible by PRWORA is different, and it is discussed above.)

In order not to give preferential treatment to households with ineligible aliens in classes that were ineligible prior to PRWORA over citizen households, the rule allows State agencies a further option to count all of the income for purposes of applying the gross income test, but use a prorated share to determine eligibility and level of benefits. For example, a household consisting of an undocumented alien and a citizen may have an income which would place the household over the maximum income limit if all of it is counted. However, if the undocumented alien is excluded from the household and only a prorated share of his or her income is counted, the remaining citizen member could be eligible. This option would allow the State agency to count all of the undocumented alien's income for purposes of determining if the household's gross income is below the gross income limit but only counting a prorated share for determining the household's allotment level. The State agency will need to consider if the number of cases affected will warrant two different income computations. Whatever option the States selects will have to be applied to all ineligible aliens in the same class.

Prior to the enactment of PRWORA, States were required to prorate only a share of the ineligible alien's income to the household. For example if a household consisted of one ineligible alien and two eligible participants, under prorating, two-thirds of the income of the ineligible alien would be counted as income available to the food stamp household. Under the 100 percent option, all of that ineligible alien's income would be counted.

Of the two States electing to count 100 percent of the income of ineligible aliens, only one State has continued this policy. The budget assumes only that one State will continue to opt for the 100 percent option. Deeming 100 percent of the income of an ineligible household member increases the countable income of food stamp households. Some households lose eligibility if deeming 100 percent of the ineligible aliens' income causes their countable income to exceed the thresholds. Other households remain eligible, but with a higher net income, qualify for smaller benefits.

Using a simulation based on 1996 Food Stamp Quality Control data adjusted to reflect rules in place in FY 1999, we estimate that under the provision allowing States to count 100 percent of the income of aliens ineligible prior to enactment of PRWORA, approximately 1,000 people remained eligible but lost an average of $95 a month in benefits and 1,000 recipients became ineligible losing $190 a month in benefits. We estimate the budget impact at −$5 million for FY 2000 and −$25 million for FY 2000 through FY 2004.

Section 827—Proration of Benefits at Recertification

This provision requires that provisions for prorating benefits at recertification revert to those in place before enactment of the Mickey Leland Childhood Hunger Relief Act of 1993. Except for migrant and seasonal farmworker households, State agencies must prorate benefits if there is any break in certification. The law affects State agencies to the extent that they have to reprogram computers and revise guidance to staff. Based on a 1989 GAO study on recertification, entitled *Participants Temporarily Terminated for Procedural Noncompliance,* we estimate that the benefits of approximately 1.23 million people will be reduced, for a budget impact of −$20 million in FY 2000 and −$100 million over 5 years. Those losing benefits lose an estimated average of less than $1.50 a month.

Departmental Initiatives

Budget Impact

The Departmental initiatives to revise the policy for counting the resource value of licensed vehicles, revise somewhat the treatment of some income, to provide an optional transitional benefit for TANF leavers, and to provide an optional alternative reporting system of semi-annual reporting for households with earnings produce a cost which slightly lowers the total savings from this rule. The cost of the Departmental initiatives is $5 million in FY 2000 and sums to $1.070 billion for the 5-year period FY 2000–FY2004.

Inaccessible Resources and Vehicles

The final rule allows some households with licensed vehicles of moderate value to participate in the program, if they are otherwise eligible and have little equity in the vehicle. The amendment to 7 CFR 273.8(e)(18) expands the list of inaccessible resources to include vehicles which if sold, would realize the seller a net proceed of no more than $1,500. Moreover, we are greatly simplifying the vehicle resource determination for households by eliminating the equity test for most vehicles. We will completely exclude vehicles used to produce income, used as a home, used to transport a disabled household member, used to carry fuel or water, or unlikely to produce a return exceeding $1,500. For each adult household member, we will exempt from the equity test one licensed vehicle not totally excluded and count that vehicle to the extent that the fair market value exceeds $4,650. For each household member under 18 years of age, we will exempt from the equity test one licensed vehicle not totally excluded which the minor drives to work, school or training, or to look for work. Any vehicles not exempted from the equity test are subject to resource evaluation at the higher of the excess fair market value or the equity value.

The proposed rule set the limit on inaccessible resources for most households at $1,000. With publication of the proposed rule, FNS granted waivers to States to implement that policy. As a result, the FY 2000 cost for

inaccessible resources, which reflects a $1,000 limit and the number of States which requested and received waiver authority, rounds to less than $5 million. Comments received on this provision urged FNS to increase the limit to $1,500, which FNS has accepted. This new policy will take effect in FY 2001 and, therefore, the FY 2001 through FY 2004 costs reflect a $1,500 limit.

State agencies are affected by this provision because it greatly simplifies the treatment of vehicles. It is expected to reduce payment errors based on incorrect application of the resource tests.

Expanding the definition of inaccessible resources costs $5 million in fiscal year 2000, $85 million in fiscal year 2001, $170 million in fiscal year 2002, $165 million in fiscal year 2003, $145 million in fiscal year 2004, with a five year total of $570 million. In fiscal year 2001, when the $1,500 limit goes into effect, 80,000 people gain, with an average monthly benefit of $88.78.

Also, eliminating the equity test for most, but not all, vehicles costs $0 million in fiscal year 2000, $30 million in fiscal year 2001, $55 million in fiscal year 2002, $40 million in fiscal year 2003, and $25 million in fiscal year 2004, with a five year total of $150 million. In fiscal year 2001, 27,000 people gain, with an average benefit of $92.65.

On October 28, 2000, the President signed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2001 (Public Law 106–387). This law includes a provision to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules, where doing so would result in a lower attribution of resources. The cost of the vehicle changes in this regulation, described above, capture the additional budgetary impact that these regulatory changes have in broadening food stamp eligibility after allowing for the expected impact of the new law.

Optional Transitional Benefits for TANF Leavers

Several advocacy groups put forth a suggestion for providing TANF leavers ''transitional food stamp benefits,'' much in the same way families receive transitional Medicaid after leaving TANF rolls. The new policy allows State agencies to freeze food stamp benefits of households leaving TANF rolls for up to 3 months, depending on the period of time since the household's last certification. Near the close of the transition period, the State agency would act on information collected from the household, either adjusting the benefit level, or closing the household's food stamp case because it is no longer eligible or it has failed to provide sufficient information to continue its eligibility for the Program. In some cases, the State agency would have to conduct a full recertification of eligibility if it is not possible to extend the household's certification period due to the statutory limitation on the length of certification periods. As the household would have no reporting requirement during the transitional period, the State agency would incur no QC liability for unreported changes in household circumstances during the period of time benefits are frozen.

While the Department encourages State agencies to offer the Transitional Benefits Alternative (TBA) to households leaving the TANF rolls, in order to ease the transition from PA, serve as an important transitional work support, and reinforce the fact that food stamps are not dependent upon eligibility for TANF, we did not offer this procedure in the NPRM. State agencies had no opportunity to comment, either to raise objections or to provide suggestions. For this reason, the final rule establishes TBA as a State agency option, not a mandatory provision of the regulations.

Families generally leave TANF when they go to work, exceed the income or asset limit (due to employment or other factors), fail to comply with the behavioral or procedural requirements of TANF, reach the Federally or State-defined time limit, lose technical eligibility, or leave voluntarily to ''bank'' their TANF months. For State agencies electing the TBA, the Department has structured the final rule to allow maximum flexibility in deciding which families leaving TANF would be eligible for TBA. The final rule requires such State agencies, at a minimum, to provide TBA to all families with earnings who leave TANF. If the household is losing income as a result of leaving TANF, the State agency must adjust the food stamp benefit amount *before* freezing the benefit amount. For example, such treatment might be appropriate when a TANF family leaves cash assistance because it has reached the time limit for such assistance and has gained no source of income which would replace the lost cash assistance. On the other hand, under the final rule State agencies may not provide TBA to households which are leaving TANF because: a household member has violated a TANF provision and the State is imposing a concomitant food stamp sanction in accordance with sections 819, 829, or 911 of PWRORA; a household member has violated a food stamp work requirement; a household member has committed an intentional Program violation; or the TANF case is closing because the State agency is taking action in response to information indicating the household failed to comply with Food Stamp reporting requirements, *e.g.,* the State agency discovered unreported income or assets through computer matching indicating noncompliance with Food Stamp reporting requirements.

Using data on TANF caseloads from the Department of Health and Human Services and data from TANF research by many sources, we derived estimates of the number of cases expected to leave TANF.

Using 1998 QC data, an average FSP benefit for TANF households was inflated to 2001 and beyond. In general, the transitional benefit policy provides two additional months of benefits to each case that leaves (the current system provides one month due to the processing requirements and the requirement to issue a notice of adverse action). We then multiply the monthly number of eligible leavers by the average benefit by 2 months of additional benefits by 12 monthly sets of leavers in a year to get the cost.

Further reductions to this cost were made to account for: (1) The likelihood that some of these cases would return to the TANF program within the transition period, thereby reducing the cost of transitional benefits because they no longer are eligible for them, (2) the fact that many households with TANF have 12 month certification periods, and (3) the fact that some households are not eligible for transitional food stamps, including households sanctioned off of TANF that receive a comparable Food Stamp sanction in accordance with sections 812, 829 and 911 of PRWORA. Current FSP law states that households may not receive benefits beyond 12 months without recertification, so those households in the 10th, 11th, or 12th month of their certification periods do not receive benefits for the entire transition period.

Finally, we apply a phase-in to account for State take-up rates. We begin with the cost if all States were to adopt the option, and then estimate that States will take up this option such that 5 percent of the cost is incurred in fiscal year 2001, 10 percent in fiscal year 2002, 15 percent in fiscal year 2003, and 25 percent in fiscal year 2004. Ultimately we expect that up to 60 percent of the benefits that could be issued via TBA will be issued by fiscal year 2007, based on assumptions regarding how many States will

implement this policy. We adopt these phase-in assumptions based on what has been learned thus far from the State response to the quarterly reporting option, and the fact that States will need to implement computer systems changes, which take time. As a result, we expect in fiscal year 2001 about 3,000 cases each month to leave TANF and receive two additional months of transitional food stamp benefits of about $226 per month (this is the weighted average for all types of cases) for a total cost of $15 million. By fiscal year 2004 the cost will rise to $73 million, affecting 14,000 cases per month, with a total cost for fiscal years 2001 to 2004 of $162 million.

Optional Semi-annual Reporting for Households with Earnings

Because the Department is aware that State agencies are reluctant to assign working households long certification periods because of potential vulnerability for quality control errors resulting from unreported changes, the Department is adopting in this final rule an optional reporting system for these households. Under this option, households with earned income assigned a six-month certification period may be required to report changes in income that result in their gross monthly income exceeding 130 percent of the poverty level a month, in lieu of the requirement to report changes in the amount of gross monthly income that exceed $25. These households would not be subject to the remaining reporting requirements in 7 CFR 273.12(a)(1). The State agency shall act on changes reported by the household that increase benefits in accordance with 7 CFR 273.12(c) and on changes in public assistance and general assistance grants and other sources that are considered verified upon receipt by the State agency. In order to adopt this option, State agencies must assign these households certification periods of 6 months or longer. State agencies may opt to waive every face-to-face interview in accordance with 7 CFR 273.2(e).

Using SIPP data covering one year, a simulation was run which counted all income changes (minus TANF changes, since it is assumed the State would know and act upon all of these changes) and how many times a household changed composition during the first six months of the year and all of the changes during the last six months of the year. All of the income increases were summed together and all of the income decreases were summed together and a net figure was calculated. This income figure was changed to a benefit figure by applying the average benefit reduction rate and by adjusting for the impact of household composition changes on benefit levels. Using the total benefits from QC data, the percent of monthly benefits not captured during the 6 month certification period was calculated.

To get the cost of this policy, this percentage was multiplied by the FY 2001 Mid-Session baseline benefits. Several adjustments were made to incorporate assumptions on reporting behavior and the policy requirements for when States must act on reported changes.

Finally, a State phase-in rate is applied. This rate is based on expectations of what States will select given all reporting options. We believe that the phase-in will be low in the first year (4 percent, for a FY 2001 cost of $3 million) as States decide which option to implement, but that it will increase rapidly and reach the maximum of 70 percent by 2005.

The cost in FY 2001 is $3 million and rises to $51 million in FY 2004, with a total cost from FY 2000 to FY 2004 of $105 million. When fully implemented it will affect nearly 1.5 million households per month.

Allow the Self-Employed to Deduct the Principal on Capital Expenditures

Current policy precludes allowing the cost of capital assets in determining self-employment income. We are revising this policy to allow capital costs in determining self-employment income. We believe that this change recognizes that capital costs are a legitimate expense in producing self-employment income and that the change will support the self-employed working poor.

We turned to Internal Revenue Service statistics to determine the potential size of the new deduction. We obtained information on the size of the depreciation deduction taken by all non-farm industries and the size of net income after all deductions for these industries. The depreciation deduction is 16 percent net income. Using this as a proxy for the size of the new food stamp deduction, we multiplied it times the average monthly self-employed income in the 1998 Characteristics of Food Stamp Households ($336). Next we adjusted it for the earned income deduction and the 30 percent benefit reduction. On average, food stamp benefits will increase by $13 per month. Multiplying by the expected number of households with self-employment income (about 100,000) produces an estimate of $15 million as the cost in each year. The sum from FY 2001 to FY 2004 is $60 million.

Plain Language

We have written this rule under the plain language guidelines to make it clearer and easier to read. We have edited wording that we preserved from the proposed rule to comply with those guidelines, using simpler words and phrases where appropriate, and changing sentences from passive to active voice. We did not change the meaning of any of the language brought from the proposed rule.

Part 272—Requirements for Participating State Agencies

Bilingual Requirements—Access to Households With Language Barriers—7 CFR 272.4 and 7 CFR 272.6

Legal aid organizations, advocacy groups, and State agencies commented on the current bilingual standards at 7 CFR 272.4(b). As prescribed by Section 11(e)(1)(B) of the Food Stamp Act (7. U.S.C. 2020(e)(1)(B)), the current rules require State agencies to use appropriate bilingual personnel and printed materials in areas in the State in which a substantial number of members of low-income households speak a language other than English. To determine if a substantial number of non-English speaking household resides in an area, the current rules specify the methodology for estimating the size of non-English speaking households and thresholds that trigger mandatory bilingual services. Bilingual services also must be provided during periods of seasonal influx, such as the influx of migrant or seasonal workers into project areas for a short period of time.

While most comments indicate general support for the current standards at 7 CFR 272.4(b), many commenters recommended additional regulatory controls to ensure State agencies are in compliance with Title VI of the Civil Rights Act of 1964, Section 11(c) of the Food Stamp Act (7 U.S.C. 2020 11(c)) and corresponding Food Stamp Program regulations at 7 CFR 272.6. Specifically, these commenters recommended that the regulations be amended to ensure non-English speaking households have access to the FSP by requiring State agencies to provide bilingual services to all non-English speaking households seeking food stamp assistance, regardless of the size of the low-income non-English speaking population in the service area or of how obscure the language may be.

Conversely, a State agency commenting on current bilingual standards asserts that PRWORA amendments under Section 835 provide State agencies with flexibility in establishing appropriate bilingual

standards and that the Department was remiss in not proposing amendments that would either remove or substantially reduce requirements at 7 CFR 272.4(b). The State agency further stated that revision of the current regulatory bilingual standards is required by the President's reform initiative to remove overly prescriptive, outdated and unnecessary regulations.

Even though Section 835 of PRWORA amends Section 11(e)(2) of the Food Stamp Act to provide State agencies with flexibility to determine certain processes that best serve eligible households within the State, it does not extend this flexibility to services required by law, such as bilingual services.

The Department appreciates the comments received on both sides of this issue. However, because of the strongly divergent views offered by commenters, the Department has decided to make no changes at this time to the current regulations. Although no regulatory changes will be made at this time, we would like to advise the public through this preamble of the August 11, 2000 Executive Order 13166 entitled, *Improving Access to Services For Person With Limited English Proficiency.*

Executive Order 13166 directs Federal agencies to ensure that recipients of Federal financial assistance, such as the State agencies administering the Food Stamp Program, are providing persons with limited English proficiency (LEP) a meaningful opportunity to participate in Federal programs and activities. Providing a meaningful opportunity to LEP persons to participate in the Food Stamp Program ensures that State agencies are in compliance with Title VI of the Civil Rights Acts of 1964. State agencies failing to provide meaningful access would be in violation of Title VI of the Civil Rights Act, which prohibits discrimination on the basis of national origin.

The Department of Justice (DOJ) has issued guidance setting forth the standards that Federal agencies and the recipients of Federal funds must follow to ensure that LEP persons have meaningful access. Each Federal Agency, in consultation with the DOJ, must develop and implement guidance. USDA is working to develop guidelines in accordance with E.O. 13166 and the Department of Justice Guidance.

State Employee Training—7 CFR 272.4(d)

Section 836 of PRWORA deleted all Federal requirements for State employee training. To reflect this change in the law, the Department proposed to delete all the mandatory training requirements at 7 CFR 272.4(d). State agencies commenting on this section support the change. Some advocate and legal organizations requested that the Department withdraw the proposal and retain current standards to ensure that State agencies properly train employees, especially those making eligibility determinations, or rendering fair hearing decisions.

The final rule adopts the proposed rule at 7 CFR 272.4(d) as written. By eliminating training requirements, we are signaling our greater concern with the outcome of training, that is, high quality administration. However, we strongly encourage states to continue to provide quality training to their employees. Quality training strengthens Program administration and communicates a strong message to employees about the importance of a well run Food Stamp Program. Where program reviews indicate program problems caused by deficiencies in staff skills, we would expect State agencies to upgrade training efforts.

Hours of Operation—7 CFR 272.4(g)

Section 848 of PRWORA deleted previously designated Section 16(b) of the Food Stamp Act. That section required the Secretary of Agriculture to establish standards for the periodic review of food stamp office hours to ensure that employed individuals were adequately served by the FSP. It also required State agencies to submit regular reports specifying the administrative actions that the State planned to take to meet the standards prescribed in that section.

To implement Section 848 of PRWORA, the proposed rule specified that State agencies would be responsible for setting the hours of operation for their food stamp offices. However, in deciding the office hours to be offered, State agencies would be required to consider section 11(e)(2) of the Food Stamp Act, as amended by section 835 of PRWORA. The amendments made by section 835 of PRWORA require States to accommodate households with special needs, such as the elderly, working poor or households residing on Indian reservations. Finally, the proposed provision no longer required State agencies to assess or report on office hours.

In the preamble to the proposed rule, we requested suggestions for best serving or providing program access to eligible or potentially eligible working individuals. Commenters most often recommended expanded office hours. One State agency, the Ohio Department of Human Services, noted that State law requires each county department of human services to have hours of operation outside the county department's normal hours of operation. During these hours, the County department will accept applications from employed individuals for the programs administered by the County department and assist employed program applicants and participants with matters related to the programs. Another State agency stated that it improved its service accessibility by using the option of a quarterly reporting waiver for households with earnings. As of July 1999, FNS extended to all State agencies the option of requiring households with earnings to submit quarterly reports. Quarterly reporting is viewed as a method for simplifying reporting requirements and reducing contacts by working households to their local certification office.

We strongly support policies establishing office hours or other accommodations designed to facilitate working families and to ensure that working families have access to the FSP. Extended office hours are very successful in improving Program access and enhancing a household's ability to succeed in work because it allows working households to schedule appointments and complete the application process without missing work. Also, State agencies that establish alternate or extended hours may benefit by receiving bonus awards from the Department of Health and Humans Services (HHS). Under HHS final rules (65 FR 52814, August 30, 2000) entitled, *Bonus to Reward States for High Performance Under the TANF Program,* a portion of the TANF bonus funding to States will be based on their performances in providing food stamps to low-income working families.

Accordingly, the Department is adopting in this final rule the proposal at § 272.4(f) that requires State agencies to consider the special accommodation needs of populations they serve, including households containing a working person. Our regulatory focus is on the desired outcome rather than the means of achieving it. Recent data indicate the FSP is vital in helping families move to self-sufficiency and that participation in the FSP is crucial in ensuring that people working for low wages have the help they need.

Nutrition Education Materials—7 CFR 272.5(b)

Section 835 of PRWORA deleted section 11(e)(14) of the Food Stamp Act (7 U.S.C. 2020(e)(14)). This section of the Act, and corresponding regulations at 7 CFR 272.5(b), required FNS to supply State agencies with posters and

pamphlets containing information about nutrition and the relationship between diet and health. State agencies were required to display these posters and to make these pamphlets available at all food stamp and public assistance offices.

FNS proposed to implement the PRWORA amendment by removing the requirement that State agencies display USDA materials. As noted in the preamble to the proposed rule, the deletion of this language does not lessen FNS' commitment to nutrition education. The new paragraph shows FNS' commitment by encouraging State agencies to develop optional State Food Stamp Nutrition Education Plans as permitted under 7 CFR 272.2(d)(2) to educate households about the importance of a nutritious diet and the relationship between diet and health. As of FY 2000, 48 State agencies have approved nutrition education plans which call for the expenditure of about $200 million for nutrition education in the FSP, of which 50 percent is financed by Federal funds. Thus, the vast majority of State agencies actively support, promote and provide nutrition education to FSP clients.

Comments received from State agencies and organizations representing States were supportive of the nutrition education proposals at § 272.5. However, one commenter requested that FNS withdraw the proposal and another objected to FNS encouraging States to implement nutrition education plans. Another commenter noted that State agencies have committed millions of dollars in non-federal funds to food stamp program nutrition education.

The final rule adopts the proposed rule at 7 CFR 272.5(b), as written. It is a State option to implement and operate a nutrition education plan. FNS provides State agencies with comprehensive guidance and with broad flexibility in determining how it will provide nutrition education to food stamp recipients. This guidance is updated annually and reinforces FNS' commitment to nutrition education by stressing the relationship of Program regulations and Federal reimbursement of costs for State nutrition education activities that are necessary and reasonable to benefit Program applicants and participants. Finally, the FSP reimburses State agencies with approved Nutrition Education plans for 50 percent of their total allowable costs.

Optional Use of the Income and Eligibility Verification System (IEVS) and the Systematic Alien Verification for Entitlements (SAVE) Program—7 CFR 272.8, 272.11 and 273.2

Section 840 of PRWORA amended Section 11(e)(18) of the Food Stamp Act (7 U.S.C. 2020(e)) to make IEVS and SAVE State options. Thus, the proposed rule removed the requirement that State agencies operate either an IEVS or a SAVE system. For State agencies electing to use IEVS and SAVE, the proposed rule only required that the State agencies observe the requirements of the data exchange agreements with agencies from which data will be obtained or exchanged. The preamble in the proposed rule noted that quality control (QC) reviews would continue to use data obtained from IEVS and SAVE as a case analysis tool.

Numerous State agencies commented on this proposal and are supportive of the option use IEVS and SAVE requirements and of the proposed elimination of IEVS and SAVE requirements. State agencies which use IEVS and SAVE will continue to conduct data exchange agreements with Federal sources. The data exchange agreements, however, will no longer be required as part of the State's Plan of Operation. A number of State agencies objected to the continued use of IEVS and SAVE as part of QC reviews. Two State agencies commented that by using IEVS and SAVE as part of QC, State agencies in effect were not being given the option to use IEVS and SAVE and would need to continue with the matches.

Current rules at 7 CFR 275.12 identify the procedures State agencies and FNS must follow when reviewing active cases included in the QC active sample. Under 7 CFR 273.12(c), a State agency must conduct a full field review for all selected active cases and this investigation must include a review of any information pertinent to a particular case which is available through IEVS. This requirement is consistent with QC review procedures that mandate the verification of all elements affecting the households eligibility and benefit level in the sample month under review.

The Department decided to retain the current rules at 7 CFR 275.12 without change because available data indicate that IEVS data are generally useful means of improving payment accuracy. Their use by QC only reinforces long-standing policy that State adopt methods of administration that secure payment accuracy.

Under Section 840 of PRWORA, State agencies may, but are not required to, use IEVS and/or SAVE as part of their responsibility in determining eligibility and benefit levels for participating households. Those State agencies electing to use either IEVS and/or SAVE are provided flexibility in determining how best the IEVS and/or SAVE data should be used. The use of IEVS as an analysis tool does not diminish a State agency's option to use IEVS or SAVE outside of the QC process.

Accordingly, the Department is adopting the proposed amendments at 7 CFR 272.8, 7 CFR 272.11 and 7 CFR 273.2 in the final rule without change.

Part 273—Certification of Eligible Households

Application Processing—7 CFR 273.2

As explained in the Notice of Proposed Rulemaking (NPRM), section 835 of PRWORA amended sections 11(e)(2) and (e)(3) of the Act, 7 U.S.C. 2020(e)(2) and (e)(3) which govern the food stamp application and certification process. Section 11(e) now provides more flexibility for State agencies to tailor day-to-day operations of the Program to the needs of individual States while ensuring that households continue to receive timely, accurate and fair service. More specifically, section 835 removed the requirement that the Secretary design a uniform national food stamp application form and eliminated dictates concerning what information had to be included on the application form and in what particular location on the form. Section 11(e) of the Act now provides that State agencies must develop their own food stamp application form and establish their own operating procedures for local food stamp offices. States may now use electronic storage of applications and other information, including the use of electronic signatures. States must provide a method of certifying and issuing benefits to eligible homeless individuals.

While the language of amended Section 11(e) encourages personal responsibility and provides more State agency flexibility, it retains key specific provisions to protect a client's right to timely, accurate, and fair service. The Act continues to: (1) Require that applications be processed within 30 days; (2) permit households to apply for participation on the same day they first contact the food stamp office during office hours; (3) consider an application as ''filed'' on the date the applicant submits the application with the applicant's name, address, and signature (benefits are calculated based on the filing date of an application); (4) require that an adult representative certify the

truth of the information on the application, including citizenship or alien status of each member, and that such signature is sufficient to comply with any provision of Federal law requiring applicant signatures; and (5) require that the State agency provide each household, at the time of application, a clear written statement explaining what acts the household must perform to cooperate in obtaining verification and otherwise complete the application process.

In the NPRM, we proposed to amend 7 CFR 273.2, ''Application processing,'' to incorporate the new requirements of Section 11(e) of the Act, as amended by various sections of PRWORA. In addition, we proposed a major streamlining of the current regulations as part of a larger effort to reduce the volume of Federal regulation.

In the NPRM, we sought to achieve a new balance in the regulations between maintaining customer protections in the application process and providing States greater flexibility in administering the program. We received a large volume of comments on our proposed changes. Commenters representing State agencies generally supported the changes, but often requested additional streamlining which would provide even greater flexibility to States in operating the program. Commenters representing the advocacy community, however, strongly objected to many of the proposed changes on the grounds that we were removing important safeguards for applicants. These commenters requested that existing rules be restored and also sought the adoption of new provisions that would strengthen customer rights.

The significant disagreement among commenters over the discretionary provisions of the NPRM have caused us to reconsider the merit of many of the proposed changes. While existing regulations are highly detailed, they do provide a national standard of customer service that promotes the basic statutory purpose of providing timely, accurate and fair service to applicants for, and participants in, the Food Stamp Program. In addition, given the sharp decline in program participation among eligibles since the passage of PRWORA and acknowledged problems with program access in several areas, we must question the desirability at this time of removing many of the protections provided applicants and participants under current regulations. Given these considerations, we have decided not to finalize the discretionary provisions proposed in the NPRM. At this time, we are finalizing only those changes to current regulations necessitated by PRWORA. For the other sections of 7 CFR 273.2, we will be retaining current rules.

Title of Part 273.2

In the NPRM, we proposed to change the title of 7 CFR 273.2 from ''Application processing'' to ''Office operations and application processing.'' We received no comments on the proposal and are adopting it as final.

General Purpose—7 CFR 273.2(a)

In the NPRM, we proposed to replace current paragraph (a), entitled ''General purpose,'' with a new paragraph (a), ''Office operations.'' The new paragraph would incorporate into the regulations the new standards for operating food stamp offices contained in Section 11(e)(2)(a) of the Act, as amended by Section 835 of PRWORA. Specifically, new paragraph (a) would require the following: (1) That State agencies establish their own procedures governing office operations that the State agency determines best serve households in the State, including households with special needs; (2) that State agencies provide timely, accurate, and fair service as required by Section 835 of PRWORA; (3) that State agencies not impose a processing requirement for another assistance program as a condition of food stamp eligibility; and (4) that State agencies have a procedure in place for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities.

The comments received on this proposal were all supportive of the proposed amendment. One commenter did fear that the prohibition on imposing processing requirements for other assistance programs as a condition of food stamp eligibility might prohibit States from utilizing household information obtained under the requirements of another program which may affect the household's food stamp eligibility. This is not correct. The State may consider household information obtained when a household applies for another public assistance program when determining a household's eligibility for food stamps. The State, however, may not require a household that is applying only for food stamps to answer questions on a joint application or submit any information that is not needed to complete a food stamp eligibility determination.

The change to 7 CFR 273.2(a) is necessary to reflect the new standards for operating food stamp offices contained in section 835 of PRWORA, so we are adopting the change as final. However, in the NPRM we had proposed to move many of the sentences in current paragraph (a) to other sections under 7 CFR 273.2. Since we are not finalizing many of the changes to the other parts of 7 CFR 273.2 proposed in the NPRM, we are restoring current paragraph (a) in the regulations. That paragraph will be renumbered (a)(2), and entitled ''Application processing.''

Food Stamp Application—7 CFR 273.2(b)

Current paragraph (b) lists the requirements for the food stamp application form, including the mandatory content for each form and the requirement that deviations from the national application form be approved by FNS. In the NPRM, we proposed to amend paragraph (b) to reflect new requirements related to the food stamp application form in Sections 11(e) of the Act, as revised by section 835 of PRWORA. Section 835 amended section 11(e) of the Act to remove the list of mandatory application content requirements. It also amended Section 11(e)(2) to require that State agencies design their own application forms, and to provide that the application form may include the electronic storage of information and the use of electronic signatures.

Specifically, we proposed to amend 7 CFR 273.2(b) to require that State agencies design their own application forms, provide that the application form may include the electronic storage of information and the use of electronic signatures, and remove the requirement in current paragraph (b)(3) regarding the need for prior FNS approval of State-designed applications which deviate from the Federally designed application. We also proposed to add a new paragraph 7 CFR 273.2(b)(2) entitled ''Application contents,'' which would, among other things, replace the list of mandatory application content requirements with a general requirement that the application must contain all necessary information to comply with the Act and regulations. Finally, we proposed to add a new paragraph 7 CFR 273.2(b)(3) entitled ''Jointly processed cases,'' which would set forth requirements for the processing of joint applications used by States to determine an applicant's eligibility for other assistance programs in addition to the Food Stamp Program.

A number of commenters objected to the proposed changes to 7 CFR 273.2(b). Specifically, many opposed our decision to remove the existing mandatory application contents requirements relating to the right of a household to file an incomplete

application for food stamps. Under current regulations at 7 CFR 273.2(b)(1)(iv) through (vii), each application form must contain: (1) A place on the front page of the form where the applicant can write his/her name, address, and signature; (2) notification on or near the front page of the application of the household's right to immediately file the application as long as it contains his or her name, address and signature; (3) a description on or near the front page of expedited service requirements; and (4) notification on or near the front page of the application that benefits are provided from the date of application. Commenters felt that without these notifications, households may be unaware of their right under Section 11(e)(2)(B)(iv) of the Act to file an incomplete application, and would likely postpone applying for food stamps until they have time to complete the entire application form.

We agree with the commenters that much of the information currently required in 7 CFR 273.2(b) should be retained in the regulations. This information, though no longer specified in the Act, is necessary to meet the standard set by PRWORA for providing timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program. Therefore, we are withdrawing most of our proposals to amend 7 CFR 273.2(b) and will retain current regulations. However, we are making some changes to the existing rules at 7 CFR 273.2(b)(1). In response to comments, we are adding language to 7 CFR 273.2(b)(1)(iii) to make it clear that the applicant is certifying to the citizenship or eligible alien status of only those household members applying for benefits. We are adding a sentence to 273.2(b)(v) that regardless of the type of system a State agency uses (paper or electronic) it must provide a means for the applicant to immediately begin the application process with name, address and signature.

We are adding a new paragraph 273.2(b)(1)(viii) to incorporate the latest nondiscrimination statement appropriate for the Program. USDA Departmental Regulation (DR) 4300–3, Public Notification Policy, dated November 16, 1999, establishes the policy for ensuring positive and continued notification of the USDA equal opportunity policy to the public. DR 4300–3 provides for three nondiscrimination statements. These statements govern: (1) Federally-conducted programs; (2) Food Stamp Program recipient agencies; and (3) Special Nutrition Programs and other recipient agencies. Interested readers may visit the FNS web site (www.fns.usda.gov) and click on ''Civil Rights'' to learn more about FNS' nondiscrimination policy.

Finally, in new paragraph 273.2(b)(1)(ix), we are incorporating language from paragraph 273.2(b)(3) which requires that multi-program application forms clearly afford applicants the option of answering only those questions relevant to the program or programs for which they are applying. We are revising current paragraph (b)(3) in its entirety to incorporate changes necessitated by PRWORA. That paragraph, which requires States to seek prior FNS approval for State-designed applications which deviate from the Federally designed application, is no longer necessary because Section 835 of PRWORA eliminated the requirement that State agencies use a Federally-designed application. However, we are incorporating the language that was proposed at (b)(3) to address comments regarding improving access to the Program.

Several commenters expressed concern that the current practice of asking all household members for information regarding their citizenship, immigration status, and possession of social security numbers was a significant barrier to participation for certain eligible low-income individuals. U.S. citizen and eligible alien members of households containing undocumented aliens or legal aliens whose immigration status does not permit them to work may feel apprehensive about providing the State agency with sensitive information about the lack of documentation or social security numbers of certain household members. On September 21, 2000, this Department and the DHHS issued a letter to all State health and welfare officials, subject: ''Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits'' (the ''Tri-Agency Letter''). Readers may visit the FNS web site (www.fns.usda.gov) and click on ''Food and Nutrition Service'', then ''Food Stamps,'' and then ''Joint Guidance on Citizenship, Immigration & SSNs.'' The Tri-Agency Letter addressed the concerns of the immigrant community by providing an option to State agencies to structure application forms so that households are allowed to declare certain household members to be ''non-applicants,'' if they did not wish to answer questions about citizenship, immigration status, or the possession of a social security number. Any household member so designated would be determined to be an ineligible household member under § 273.11(c) and would not receive Program benefits. Further, such ineligible household members must otherwise cooperate fully by disclosing their income, resources, and any other information the State agency needs to determine the eligibility and benefit amount of the other household members.

If a state decides *not* to permit individual family or household members to decline to provide citizenship, immigration status or SSN information early in the application process, the state must still ensure that their applications forms promote enrollment of eligible families and eliminate the potential for discriminatory impact on eligible applicants based on national origin. Furthermore, even in those states that elect not to offer applicants early opportunity to decline to reveal citizenship, immigration status, or SSN information, long-standing policy directs that when a household member does not disclose his or her citizenship, provide or apply for an SSN, or establish satisfactory immigration status, the State agency must determine that household member ineligible for benefits, but cannot deny benefits to eligible citizen or immigrant household members simply because other household members fail to disclose such information.

Some commenters suggested that the final rule should require State agencies to make early declaration of ''non-applicant'' status available for individuals who know they do not have documents to prove their immigration status, or cannot possess social security numbers. In this regard, the Department is still very concerned that current State agency application forms and processes inadvertently may have the effect of deterring eligible applicants and recipients who live in immigrant households from enjoying equal participation and access to Program benefits based on their national origin, in violation of section 11(c) of the Food Stamp Act and Title VI of the Civil Rights Act of 1964. However, as the NPRM did not address this issue at all, we will not proceed further without consultation with all partners and stakeholders through a future rulemaking. In the meantime, the Department encourages State agencies to adopt the option allowing them to adjust their application forms and processes to accommodate households containing some members who know

they do not have documents to prove their immigration status or who might have difficulty in applying for a social security number.

7 CFR 273.2(c)—Filing an Application

In the NPRM, we proposed to amend paragraph 7 CFR 273.2(c), ''Filing an application.'' We proposed to add a new paragraph 7 CFR 273.2(c)(1) entitled ''Filing process.'' The new paragraph would: (1) Retain the requirement appearing in the first sentence of current paragraph (c)(1) regarding the manner in which applications can be submitted; (2) include new language that clarifies that the application may be submitted by facsimile transmission as well as in person, through an authorized representative, or by mail; (3) include new language that recognizes that some State agencies are using on-line or other types of automated applications that may require the applicant to come into the local office to complete the application; (4) include the requirement appearing in the fifth sentence of current paragraph (c)(1) that allows an applicant to file an incomplete application provided it contains at the least the applicant's name, address, and signature; (5) remove the language appearing in the sixth sentence of current paragraph (c)(1) which requires State agencies to document the date the application was filed by recording on the application the date it was received by the food stamp office; and (6) provide that applications signed through the use of electronic signature techniques and applications containing handwritten signatures which are then transmitted to the appropriate office via fax or other electronic transmission technique are acceptable.

We proposed to add a new paragraph 7 CFR 273.2(c)(2) entitled ''Households right to file.'' The new paragraph would require the State agency to: (1) Make food stamp applications readily accessible to all potentially eligible households or to anyone who requests one; (2) provide an application in person or by mail to anyone who requests one; (3) mail an application by the next business day to anyone who requests an application by mail; (4) allow a household to file an application on the same day it contacts the food stamp office during office hours; (5) post signs or make available other advisory materials explaining a person's right to file an application on the day of their first contact with the food stamp office and the application processing procedures; (6) notify all persons who contact a food stamp office and either request food assistance or express financial and other circumstances which indicate a probable need for food assistance, of their right to file an application and encourage them to do so.

New paragraph (c)(2) would also address the handling of applications filed at the wrong certification office. The new paragraph would: (1) Continue to allow the State agency to require households to file an application at a specific certification office or allow them to file an application at any certification office within the State or project area; (2) require that if an application is received at an incorrect office, the State agency advise the household of the address and telephone number of the correct office; (3) require the State agency to forward an application received at an incorrect office to the correct office not later than the next business day; and (4) remove the requirement currently located in the third sentence of 7 CFR 273.2(c)(2)(ii) that the State agency inform the household that its application will not be considered filed and the processing standards must not begin until the application is received by the appropriate office.

We proposed to add a new paragraph 7 CFR 273.2(c)(4) entitled ''Notice of required verification.'' The new paragraph would require that State agencies: (1) Provide households, at the time of application for certification and recertification, with a clear written statement of what acts the household must perform in cooperating with the application process, and identify potential sources of required verification; and (2) inform special needs households of the State agency's responsibility to assist them in obtaining required verification, providing the household is cooperating with the State agency. Special needs households were defined as including, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, and households in areas in which a substantial number of members of low-income households speak a language other than English.

Finally, we proposed to remove current paragraph (c)(5), and to redesignate current paragraph 273.2(c)(6) ''Withdrawing an application,'' as new paragraph (c)(3).

Numerous commenters objected to some of the proposed changes to 7 CFR 273.2(c) on the grounds that we were removing important safeguards for applicants. For example, one commenter opposed the revision to 7 CFR 273.2(c)(1) which deleted the requirement that States encourage a household to file an application on the same day the household first contacts the food stamp office for assistance. The commenter thought that the language to encourage same day filing should be retained and expanded to prohibit State agencies from suggesting any disadvantages there might be to applying for food stamps and require them to explain that possible disadvantages of applying for other programs do not relate to the Food Stamp Program.

Many commenters also objected to our proposal to repeal the current requirement that the food stamp office document the date an application is filed by recording on the application the date it is received. The commenter thought that, rather than delete the requirement, the Department could make it more flexible to account for the different ways that States may have for recording application filing dates, such as through automated systems.

Many commenters also objected to the proposal to provide States with an extra day for mailing an application to a household that requests one over the telephone and for mailing applications to the correct office when filed at the incorrect office. The commenters noted that the proposed changes will likely result in affected households losing one-thirtieth of their benefits for the month of application. The commenter recommended that the proposed regulations be amended to offer States the option of forwarding a misfiled application by mail the day it is received or by fax the next day. The commenter also recommended that the final rules provide an exception to the current requirement for mailing an application the day it is requested by phone to allow for when the request is made after the last mail collection of the day.

Some commenters believed that the proposed provision did not go far enough in providing flexibility for State agencies, and recommended further simplification to the regulations. One commenter remarked that the proposed regulations at 7 CFR 273.2(c)(2), (c)(3), and (c)(4) appeared to be more prescriptive than required by the Food Stamp Act and Section 835 of PRWORA and should be redrafted in the final rule to allow States the flexibility prescribed by the Act to establish their own procedures in the operation of local offices.

Giving the considerable disagreement on the proposed provisions among commenters, and our commitment to retaining provisions in the regulations that meet the goal of PRWORA to

provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program, we have decided to withdraw the proposed changes to 7 CFR 273.2(c). We may consider revising these regulations in a future proposed rulemaking. At this time, we are implementing only those changes to the existing regulations at 7 CFR 273.2(c) that are necessitated by PRWORA.

Current regulations at 7 CFR 273.2(c)(1) require that households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, or by mail. No provision is made for the electronic submission of applications. As noted above, however, Section 11(e)(2)(C) of the Act, as amended by Section 835 of PRWORA, now allows for the use of signatures provided and maintained electronically, for the storage of records using automated retrieval systems only, and for any other feature of a State agency's application that does not rely exclusively on the collection and retention of paper applications or other records. In accordance with the revised provisions of Section 11(e)(2)(C) of the Act, we had proposed in the NPRM to revise section 7 CFR 273.2(c)(1) to specifically provide that applications signed through the use of electronic signature techniques and applications containing handwritten signatures which are then transmitted to the appropriate office via fax or other electronic transmission technique are acceptable means of filing a food stamp application.

We received several comments in support of the change, and are finalizing the provision at 7 CFR 273.2(c)(1). One commenter thought that the household should be given a paper printout of whatever information is recorded electronically in order to be able to review it and correct errors before the certification process has gone too far. We agree with the commenter that the household should be able to verify the information that has been recorded. However, we believe how that should be done should be left up to the State agency and we are amending the final rule accordingly.

We are making three additional changes to the current regulations in response to comments. The current regulations at 7 CFR 273.(2)(c)(1)(i) provide that the State agency must encourage households to file an application on the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in receiving food stamps. One commenter pointed out that some applicants for assistance may not be aware of the Food Stamp Program, or aware that they might be eligible, so they don't express interest in the specific Program, even though they express concerns about food security. Therefore, in response to comments and to increase access to the Program, we are adding that the State agency must encourage a household to file an application for the Program if it expresses concerns about food insecurity.

Current regulations at 7 CFR 273.2(c)(2)(ii) provide that the certification office shall offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file. One commenter suggested that State agencies may not be able to forward the application on the same day. In order to give the State agencies some flexibility, while at the same time protecting the interests of the applicant, this commenter suggested we allow the State agency to forward it the next day, providing that the State agency ensures it arrives in the appropriate office the day it was forwarded. In other words, it can send it electronically, via fax, or courier, as long as it arrives the day it was forwarded. We agree that this will afford the State agency flexibility and protect the applicant. Therefore, we are modifying 7 CFR 273.2(c)(2)(ii) to provide that the State agency may forward the application the next day by any means that ensure the application arrives at the appropriate office the day it was forwarded.

One commenter expressed concern that in an attempt to divert households from public assistance, the State agency might inadvertently divert a household from applying for food stamps. This commenter suggested that in order to protect applicants rights, we amend 7 CFR 273.2(c)(2)(i) and remind State agencies not to discourage households from applying for food stamps. In response to these comments and in an attempt to increase Program access, and in conformance with changes we are making at 7 CFR 273.2(j) which are discussed later in this preamble, we are providing at 7 CFR 273.2(c)(2)(i) that if the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

Finally, current regulations at 7 CFR 273.2(c)(3) require that State agencies make application forms readily accessible to potentially eligible households and provide an application form to anyone who requests one. One commenter pointed out that many State agencies now use paperless or interactive electronic systems and no longer keep paper applications in stock. Therefore, to accommodate the various types of systems in use by State agencies, and to ensure that applicants receive timely, accurate and fair service, we are modifying the language at 7 CFR 273.2(c)(3) to provide that regardless of the type of system a State agency uses (paper or electronic), the State agency must provide a means for applicants to begin the application process immediately by providing a name, address and signature.

Household Cooperation—7 CFR 273.2(d)

In the NPRM, we proposed to amend current regulations at 7 CFR 273.2(d), which contain provisions related to household cooperation in the application process and quality control reviews. We proposed to retain all of the contents of current paragraph (d)(2), and amend paragraph (d)(1) as follows: (1) Rename the paragraph ''Cooperation with application process''; (2) remove the example of ''refusal to cooperate'' appearing in current paragraph (d)(1); (3) expand on the policy regarding household cooperation with subsequent reviews to provide that a subsequent review can be in the form of an in-office interview; and (4) remove the last two sentences of current paragraph (d)(1), which concern the failure of a person outside of the household to cooperate with a request for verification.

One commenter strongly opposed our amendments to 7 CFR 273.2(d)(1). The commenter believed that in revising the paragraph, we had omitted words and phrases that were critical to preserving the rights of food stamp participants and which may leave the requirements of the paragraph open to misinterpretation. For example, existing regulations require that for a food stamp office to deny a household's application for refusal to cooperate, the household must be able to cooperate but clearly demonstrate that it will not take actions *it can take* that are required to complete the application process. In the proposed rule, we had removed the words ''it can take'' from the sentence, believing them to be unnecessary. The commenter believed, however, that removal of the words *it can take* would leave the

sentence open to new interpretations, including the possibility that a household could be denied food stamps based on its failure to produce a document that has been destroyed or its failure to obtain a note from its estranged landlord.

The commenter also objected to our proposal to remove the example of ''refusal to cooperate'' appearing in current paragraph (d)(1). The example, which is meant to illustrate the difference between a household being unable to cooperate and refusing to cooperate in completing the application process, states that to be denied for refusal to cooperate, a household must refuse to be interviewed and not merely fail to appear for the interview. We proposed removing the example because there are numerous ways that a household could refuse to cooperate, and the example is not definitive. The commenter believed, however, that the example illustrates an important principle—protecting applicants that make good faith efforts to cooperate—which does not exist in many TANF programs, and which, without a concrete example, may not be applied properly by eligibility workers whose primary training has been in AFDC and TANF.

The commenter also objected to our proposal to remove the last two sentences of current paragraph (d)(1), which concern the failure of a person outside of the household to cooperate with a request for verification. The first of these sentences provides that the State agency may not determine a household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Section 835 of PRWORA amended section 11(e)(3) of the Act to remove this requirement. The last sentence of current paragraph (d)(1) describes certain individuals who are not considered ''outside'' the household for the purpose of the existing provision and, because of the change brought about by Section 835 of PRWORA, is no longer necessary. We noted in the proposed rule that removal of these two sentences does not change current policy because refusal to cooperate continues to be defined as refusal by a household member. The commenter argued, however, that without a clear statement in the regulations that a household may not be determined ineligible because of the failure of a person outside the household to cooperate with a request for verification, eligibility workers are likely to fail to apply the principle and incorrectly deny applications.

We agree with the commenter that clarity in the regulations is critical to ensuring that all food stamp applicants and participants receive timely, accurate and fair service. Therefore, we are withdrawing our proposal to amend paragraph 7 CFR 273.2(d)(1) and we are retaining the existing language of the paragraph with one modification. We are reminding State agencies that they must also assist households in obtaining the required verification if the household is cooperating with the State agency as provided for by paragraph 7 CFR 273.2(c)(5).

Interviews—7 CFR 273.2(e)

In the NPRM, we proposed to amend current regulations at 7 CFR 273.2(e), which address interview procedures. Chief among the changes was a proposal to eliminate the requirement that every household have a face-to-face interview at all recertifications. As discussed in the NPRM, prior to PRWORA, the Act did not contain an explicit provision requiring food stamp applicants to be interviewed. Rather, the requirement is inferred. Section 11(e)(2) did provide language which allowed elderly/disabled households to request a waiver of the in-office interview under certain conditions. Section 835 of PRWORA amended section 11(e)(2) of the Act to remove this waiver language, thereby eliminating any reference in the Act to the fact that in-office interviews are conducted. In consideration of the removal of the waiver language and in the spirit of PRWORA, the Department chose to reevaluate current policy and proposed in the NPRM to replace the current interview requirement with the requirement that a face-to-face interview be required at the time of initial certification and at least once every 12 months thereafter unless the household is certified for longer than 12 months or the face-to-face interview is waived by the State agency. This proposal would eliminate the requirement to conduct a face-to-face interview at the time of recertification if it occurs during the 12-month period since the last face-to-face interview.

In addition, we proposed to amend current rules at 7 CFR 273.2(e)(2) which address waivers of the interview requirement. Prior to enactment of PRWORA, the interview could *only* be waived if requested by the household because the household was unable to appoint an authorized representative and had no adult household members able to come to the office because the members were elderly, mentally or physically handicapped, lived in a location not served by a certification office, had transportation difficulties, or had similar hardships as determined by the State agency. Section 835 of PRWORA struck this waiver provision from the Act and amended Section 11(e)(2) of the Act to provide State agencies the authority to waive an interview without first being requested by a household. In the NPRM, we proposed to amend 7 CFR 273.2(e) to require the State agency to waive the in-office face-to-face interview in favor of a telephone interview or announced home visit for household hardship cases. The proposal allowed the State agency to determine what constitutes hardship cases. It also allowed the State agency to waive the in-office interview in favor of a telephone interview or scheduled home visit for households with no earned income if all of its members are elderly or disabled. Under the proposal, the State agency would continue to be required to grant a face-to-face interview to any household that requests one.

Most commenters were supportive of our proposals to revise the face-to-face interview requirements, which were felt to be burdensome on both participants and State agencies. Because of that support and because the changes stem from amendments to the Act made by PRWORA, we are adopting the proposals as final in this rule.

In addition to the above noted changes, we also proposed in the NPRM to further revise 7 CFR 273.2(e) to simplify current provisions and provide more State agency flexibility in the area of scheduling interviews. However, we received mixed remarks on these proposed changes from commenters. Several commenters, while supporting the added flexibility provided to State agencies, thought we did not go far enough in simplifying current rules. For example, several commenters requested that we remove the current requirement that the State agency hold applications pending until the 30th day from the date of application when an applicant misses the scheduled interview or fails to provide requested information or verification within 10 days of the request. This would allow States to take immediate action to deny an application after a missed interview or the expiration of the 10-day period for return of requested information.

Other commenters felt that the proposed regulations did not provide enough safeguards for food stamp applicants and recipients. These commenters thought that the rules should more closely reflect the priority the Administration has given to preserving access to food stamps for low-income families in need, and should be amended to include

additional requirements, such as the following: (1) The food stamp office should routinely notify all applicants about the possibility of waiving the face-to-face interview in cases of hardship and the procedures for requesting such waivers; (2) the food stamp office should notify all applicants that they may send an authorized representative to their interview if they cannot attend personally; (3) the food stamp office should notify the applicant of the date and time of the interview in person, by telephone, or by letter mailed at least seven days in advance of the scheduled interview; (4) the food stamp office should send an applicant that misses a scheduled interview a notice informing him or her of this fact. The notice should ensure that the household has at least 10 days (or, if longer, until the thirtieth day following the date of application) in which to contact the food stamp office to reschedule an interview before the application may be denied and should provide a general telephone number the applicant may call to reschedule the appointment without having to reach any particular eligibility worker; (5) the food stamp office should reschedule the interview for any applicant that visits or calls the office on or before the thirtieth day after filing his or her application if the household indicates a continued interest in receiving food stamps; and (6) the food stamp office should be required to accommodate working families in one of the following three ways: (a) When the office is open during hours the applicant does not work, offer the applicant an interview time that does not conflict with his or her work schedule; (b) if the food stamp office is not open during hours when the applicant is not working, offer the applicant a telephone interview, perhaps during the applicants lunch hour or scheduled break; or (c) attempt to reschedule the first missed interview.

Given the considerable disagreement among commenters on our proposals to amend 7 CFR 273.2(e), and the Department's commitment to ensuring that all food stamp applicants and participants receive timely, accurate and fair service, we have decided to withdraw most of the proposed changes not required by PRWORA and to retain current rules. However, we are taking this opportunity to remind State agencies of current policy: (1) State agencies should take into consideration the needs of the household and accommodate these needs when scheduling interviews as much as possible (such as scheduling interviews for working households when the applicant is not scheduled to work or after hours); (2) State agencies should schedule interviews so that the household has at least 10 days to provide requested verification before the end of the 30 day processing period; (3) State agencies may not request private information from households during a group interview; (4) State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. The latter reminder is being incorporated into the regulations at 7 CFR 273.2(e).

We are finalizing two proposed changes put forth in the NPRM. Current regulations at 7 CFR 273.2(e)(3) require State agencies to schedule a second interview if a household fails to attend the first scheduled interview. In the NPRM, we proposed to delete that requirement. As noted in the NPRM, some State agencies have found it burdensome to schedule multiple interviews and have found that a household that fails to attend the first scheduled interview frequently does not attend a second scheduled interview. For many years, we have granted State agencies waivers of the requirement to reschedule a missed interview, under the waiver authority in 7 CFR 272.3(c), on the conditions that the State agency notify each household on the application or interview appointment notice that it is the household's responsibility to contact the State agency to reschedule a missed interview, and that the State agency not deny the household's application prior to the 30th day after application.

As with many of our proposals, comments received on our proposal to remove the requirement that State agencies reschedule a missed interview were mixed. Some commenters strongly supported the change, noting that requiring State agencies to schedule a second interview if the applicant fails to attend the first scheduled interview is not only burdensome but unnecessary, because those households that miss the first interview and do not reschedule it on their own, frequently, if not always, do not attend the second scheduled interview either. Other commenters, however, were concerned that changing the policy could result in the denial of food stamps to working families who, unable to attend the first interview due to a work conflict or sick child, may have difficulty reaching the food stamp office or scheduling an interview time they can make before the end of the 30-day period.

We recognize that a household may not be able to attend a scheduled interview. However, in the spirit of PRWORA, which focuses on State agency flexibility in the certification process and household responsibility, we are removing the requirement that the State agency reschedule a missed interview. However, we are adding a requirement to 7 CFR 273.2(e)(3) that the State agency must send a notice to the households that miss their interview appointments indicating that it missed the scheduled interview and informing the household that it is responsible for rescheduling a missed interview. In addition, we are reminding State agencies that if the household contacts the State agency within the 30 day processing period, the State agency must schedule a second interview. We are making a conforming amendment at 273.2(h)(1)(i)(D). We are also adding a statement to the same section that reminds the State agency that it may not deny a household's application prior to the 30th day after application if the household fails to appear for the initial interview.

We proposed at 7 CFR 273.2(e)(1) that interviews may be conducted at the food stamp office or another mutually convenient location of the State agency's choosing, including a household's residence. One commenter suggested we reword the statement to provide that the location be ''mutually acceptable'' as opposed to a ''mutually convenient location of the State agency's choosing.'' The commenter argued that a mutually acceptable location is by definition acceptable to the food stamp office. In addition, this commenter stated that the regulations as written could be read that applicants must be interviewed in their homes. Since home interviews can be viewed as invasive and demeaning, the household should be allowed to suggest another location. If the alternative is inconvenient to the food stamp office, it can always decline. We agree with the commenter that the State agency and the household should agree on a location. Therefore, we are modifying the proposed language and finalizing it to provide that interviews may be conducted at the food stamp office or another mutually acceptable location, including a household's residence. However, we are also reminding State agencies that if the interview is to be conducted in a household's residence, it must be scheduled in advance with the household.

We proposed at 7 CFR 273.2(e)(2) that the State agency must waive the face-to-face interview in favor of a telephone interview on a case-by-case basis because of household hardship situations. One commenter said that since food stamp offices are no longer required to reschedule missed interviews, the opportunity for a waived interview becomes much more important, especially for those applicants for whom coming into the office is a hardship. However, few households are aware of this option. Therefore, this commenter suggested that we require State agencies to notify households of their right to a waiver of the face-to-face interview. We agree with this comment. Therefore, at 7 CFR 273.2(e)(2) we are adding the requirement that State agencies must notify the applicant that it will waive the face-to-face interview for hardship situations as determined by the State agency. In addition, we are retaining current rules which provide that household hardship situations include, but are not limited to: illness, transportation difficulties, 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.

We are making an additional change to current regulations at 7 CFR 273.2(e) in response to comments. In their remarks, several commenters objected to the practice in some State offices of scheduling interviews on a ''first-come, first-served'' basis. Typically, a local agency will establish a ''quota'' for the number of applicants that staff can interview during established working hours. Potential applicants will begin to line up in front of the office early in the morning in hopes of getting an interview that day. Once the number of applicants in line reaches the ''quota'', the local agency will accept no more individuals for an interview. The local agency will continue to accept applications, but staff advise any further potential applicants to come back the next working day. Under this procedure, a household may have to return to the food stamp office several times in order to be interviewed for the program. This policy is not acceptable as it clearly presents a barrier to participation for certain groups, such as working families, who cannot afford to take time off repeatedly in an attempt to be interviewed. It also violates the principle implied in 7 CFR 273.2(e) that the State agency schedule a specific date and time for an interview for every applicant household. Therefore, we are amending the regulations at 7 CFR 273.2(e) to clearly require that the State agency must schedule an interview for each applicant that is not interviewed on the day he or she submits an application. To the extent practicable, States should schedule the interview to accommodate the needs of groups with special circumstances, including working families.

Verification—7 CFR 273.2(f)

Current 7 CFR 273.2(f) sets forth the procedures, including the types of documents required, for providing verification to establish the accuracy of statements on the application. In the NPRM, we proposed to amend paragraph (f) to incorporate changes required by PRWORA and to respond to the President's regulatory reform initiative. We received a vast number of comments on our proposed changes to this section. Many commenters thought that while FNS had proposed some useful simplification of requirements related to verification, the agency did not go far enough in streamlining current requirements. These commenters thought that the rules should go further and, among other things, leave verification requirements to be decided by States, which should be given the flexibility to target verification requirements to items most likely to cause payment errors and relax others in the interest of facilitating program access.

Other commenters strongly opposed our decision to remove many of the provisions in the current regulations. The commenters thought that without these provisions clearly stating verification requirements State eligibility workers could misapply policies, effectively discouraging households from following through with their program application. For example, one commenter thought that the Department should reinstate the requirements at current section 273.2(f)(1)(vii) which provide that any documents which reasonably establish the applicant's identity must be accepted and no requirement for a specific type of document, such as a birth certificate, may be imposed. Without this language, the commenter feared that some food stamp offices would insist that a household produce the one form of verification they consider ''best'' even if the applicant lacks that form of identity. The same commenter thought that FNS should reinstate in section 273.2(f)(1)(vi) a cross reference to section 273.3(a), which prohibits States from establishing durational residency requirements. The commenter notes that while section 273.3(a) would continue to prohibit durational residency requirements, without a cross-reference to that provision in the verification rules, it could be missed by many eligibility workers, resulting in improper denials.

Given the considerable disagreement among commenters on our discretionary proposals to amend 7 CFR 273.2(f), we have decided to withdraw those proposed changes and retain current regulations. We may consider again proposing revisions to 7 CFR 273.2(f) in a future rulemaking. At this time, we are adopting into the regulations changes necessitated by PRWORA.

In response to comments, we are retaining one sentence from the NPRM in the final rule. The final rule at 7 CFR 273.2(f) will remind State agencies to give households at least 10 days to provide required verification in accordance with 7 CFR 273.2(h)(1)(i)(C) and refer State agencies to 7 CFR 273.2(i)(4) which contain the verification procedures for expedited service cases.

The regulations at current paragraph (f)(1)(xi) provide the requirements for verifying the shelter costs of homeless households who claim shelter costs greater than the homeless household shelter standard. In the NPRM, we proposed to revise the first sentence of this section to conform with Section 5(e) of the Act, 7 U.S.C. 2015(e)(5), as amended by Section 809 of PRWORA, which establishes an optional homeless household shelter deduction. This PRWORA change is discussed later in this preamble. The revised sentence requires homeless households claiming shelter expenses to provide verification of their shelter expenses in order to qualify for the homeless shelter deduction if the State agency has such a deduction. We also proposed to remove the language currently appearing in the second and third sentences of the paragraph which requires the eligibility worker to use prudent judgment in determining if the homeless household's verification of shelter expenses is adequate and provides an example. These sentences do not provide specific verification requirements and thus, we believed, are not necessary.

One commenter objected to requiring verification of shelter expenses over and above the homeless shelter deduction. The commenter pointed out that under section 5(e)(5) of the Act, States are not required to limit this deduction to households that can verify shelter costs. States may choose not to do so in recognition of the fact that when people pay for temporary shelter, it is

commonly through informal transactions that are impossible to verify. The commenter expressed concern that if the final rules mandate verification of these expenses, they are likely to result in the effective elimination of this deduction: States may find verifying incidental shelter expenses too burdensome and error-prone and drop the deduction, or; in those States that maintain it, few homeless households would produce satisfactory verification. We agree with this commenter. Therefore, we are deleting the requirement at 7 CFR 273.2(f)(1)(xi). We are moving that provision to 7 CFR 273.2(f)(2)(iii) under which States may verify the information if questionable. In addition, several commenters objected to our intention to remove the second and third sentences of paragraph (f)(1)(xi). One commenter thought that eliminating the option of allowing State agencies to use prudent judgment if the household claims shelter expenses but is unable to provide verification places an undue burden upon this very vulnerable population. We agree with the commenters that retaining the last two sentences in current paragraph (f)(xi) may prevent an unnecessary verification burden on homeless households, and we are retaining the two sentences in this rule at 7 CFR 273.2(f)(2)(iii).

Current paragraph (f)(4)(i) and (ii) provide that the State agency may use a collateral contact to verify information provided by an applicant. One commenter expressed concern that collateral contacts impair the confidentiality protections of the statute. This commenter warned that an inquiry from the food stamp office makes it obvious that a household has applied for benefits. This might be an embarrassment to the household. Therefore, to respond to this commenter's concerns, we are revising 7 CFR 273.2(f)(4)(ii) to provide that when talking with a collateral contact, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for food stamps, and should not disclose any information supplied by the household, especially information that is protected by 7 CFR 273.1(c). State agencies should also not suggest that the household is suspected of any wrong doing.

Current paragraph (f)(4)(iii) governs use of home visits in the event documentary evidence is insufficient. One commenter expressed concern that some State agencies may justify home visits for the entire caseload or certain segments of the caseload by asserting that certain households are more error-prone. Certainly our intention in this provision is not to sanction universal mandatory home visits or home visits for households that fit error-prone profiling. Certainly rumors of such a policy could have a chilling effect on program participation. We are taking this opportunity to remind State agencies that home visits are to be used only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, and the home visit is announced in advance. In addition, in response to this commenter and to improve Program access, we are amending 7 CFR 273.2(f)(4)(iii) to provide that home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Simply because a household fits a profile of an error-prone household doesn't mean that it has not provided sufficient verification. In addition, we are reminding State agencies to assist the household in obtaining verification in accordance with 7 CFR 273.2(c)(5). The commenter also suggested that we broaden the prohibition on unannounced investigatory home visits. Such an action is beyond the scope of this rule. However, we are taking this opportunity to suggest that State agencies consult their legal counsel on their authority to stage unannounced home visits that are intended to investigate fraud. Neither the Food Stamp Act nor the Program regulations provide authority for such visits.

Current paragraph (f)(5)(i) requires State agencies to help applicants with verification, allows households to supply documentary evidence in person or through another means, prohibits State agencies from requiring households to present verification in person, and requires the State agency to accept any reasonable documentary evidence provided by households. Section 835 of PRWORA revised section 11(e) of the Act to remove the requirement that State agencies assist households in obtaining verification and the prohibition against requiring households to present additional proof of a matter for which the State agency already possesses current verification. While PRWORA removed the requirement to assist all households in the verification process, there remains a mandate to offer assistance to special needs households.

Although Section 835 of PRWORA did remove several requirements related to verification from the Act, we have decided not to change the substance of the current regulation. We believe that the current, long standing policies at 7 CFR 273.2(f)(5)(i) are a necessary adjunct of the PRWORA requirement that State agencies provide accurate, timely, and fair service. This includes the policy that States assist all applicants in obtaining verification. Although the Act now requires States to assist, at a minimum, households with special needs, we believe that in order to satisfy the Act's standard of timely, accurate and fair service, States must be required to assist all households in obtaining verification. The final rule does amend the current language to allow households to submit documentation by facsimile or other electronic devices.

Current paragraph (f)(9) provides procedures for using IEVS information to verify eligibility and benefits. To conform to the changes we previously discussed under section 272.8, in the final rule, we are amending the title of 7 CFR 273.2(f)(9) and the contents of paragraph (f)(9)(i) to indicate that use of IEVS is now a State option. If State agencies do access IEVS, the procedures contained in the remainder of paragraph (f)(9) are still appropriate and, therefore, we are making no other changes to the section.

Current paragraph (f)(10) provides procedures for verifying alien status through the SAVE system. To conform to the changes we previously discussed under § 272.11, in this final rule, we are amending the introductory paragraph of 7 CFR 273.2(f)(10) to indicate that use of SAVE is now a State option. If State agencies do access SAVE, the procedures contained in the remainder of paragraph (f)(10) are still appropriate and, therefore, we are making no other changes to the section.

We also proposed in the NPRM to make a number of revisions to paragraph (f) to reflect changes in the procedures for verifying alien status in the Food Stamp Program required by PRWORA and other Federal laws. A discussion of those proposed revisions follows in the paragraphs set forth below.

How Must State Agencies Verify Eligible Alien Status?

Section 402 of PRWORA and Sections 503 through 509 of AREERA made extensive changes in requirements for alien eligibility which affect the verification requirements. The changes affecting eligibility are described below under the discussion of alien eligibility at section 273.4 in this final rule. Section 432 of PRWORA also affects the requirements for verification of alien eligibility. Section 432(a) of PRWORA and subsequent amendments required the Attorney General to publish

regulations providing requirements for verifying that a person applying for a Federal public benefit is a qualified alien or is a U.S. citizen or non-citizen national and is eligible to receive the benefit. The Department of Justice (DOJ) developed Interim Guidance, which it published in the **Federal Register** on November 17, 1997 (62 FR 61344). State agencies should also be aware that DOJ will be publishing a final rule on Verification of Eligibility for Public Benefits. DOJ published the proposed rule in the **Federal Register** on August 4, 1998 (63 FR 41662). Our proposed rule referenced the forthcoming final rule. We proposed that the Department would incorporate into the final version of this rule relevant changes to alien verification procedures that DOJ's makes in its final rule. The Interim Guidance provides currently acceptable procedures for the verification of citizenship, alien status, and military connections. Section 432(b) of PRWORA provided that not later than 24 months after the date the verification regulations are adopted, States that administer a program that provides a Federal public benefit must have in effect a verification system that complies with the new regulations. We proposed to remove current paragraphs (f)(1)(ii)(B), (C), and (D), which mandate the types of documents that State agencies must use for verification. State agencies may refer to the DOJ Interim Guidance, Program policy interpretations, and the Social Security Administration (SSA) procedures for obtaining work history information. These sources provide examples of verification, including verification the household provides, which State agencies may use in developing their own verification requirements.

The Department proposed to remove current 7 CFR 273.2(f)(1)(ii)(A), which requires the household to provide verification that each alien is eligible. In the introductory paragraph (f)(1)(iv), we proposed that State agencies must verify the immigration status of all aliens and other factors relevant to the eligibility of individual aliens prior to certification. Other factors relevant to the eligibility of individual aliens could be the date of admission or date status was granted; military connection; 40 qualifying quarters of work coverage; battered status; Indian, Hmong or Highland Laotian status; place of residence on August 22, 1996; or age on August 22, 1996. We also proposed to include in new paragraph (f)(1)(iv) the provision from the first sentence of current paragraph (f)(1)(ii)(G), which provides that an alien whose eligibility is questionable is ineligible until the alien provides acceptable documentation, with two exceptions which would be contained in new paragraphs (f)(1)(ii)(A) and (B). We would remove the last sentence of current paragraph (f)(1)(ii)(G) because the reference to 7 CFR 273.11(c) is unnecessary. These changes, would eliminate current paragraph (f)(1)(ii)(G). In regard to expedited service, State agencies would have determined the eligible status of aliens prior to certification, but could postpone verification in accordance with paragraph (i).

Pursuant to the President's regulatory reform initiative, we proposed to remove the first two sentences and the last sentence of current paragraph (f)(1)(ii)(E) because they do not provide any significant guidance to State agencies and are unnecessary. New paragraph (f)(1)(ii)(A) would include the provisions appearing in the third and fourth sentences of current paragraph (f)(1)(ii)(E), with some changes in wording for clarity. The third sentence of current paragraph (f)(1)(ii)(E) provides that when a State agency accepts a non-INS document from the household as reasonable evidence of alien status, the State agency must send the document to INS for verification. The fourth sentence of current paragraph (f)(1)(ii)(E) provides that the agency must not delay, deny, reduce or terminate an individual's benefits while awaiting such verification. With these changes, current paragraph (f)(1)(ii)(E) would be eliminated.

Several advocacy groups thought that the introductory text of paragraph (f)(1)(iv) (''[t]he immigration status of aliens must be verified.'') would lead State agencies to attempt to verify the immigration status of ineligible aliens. We did not intend such a result. The final rule makes it clear that the Department is authorizing State agencies to verify only the status of aliens claiming eligible immigration status. Moreover, we are retaining the language of the current rule indicating that households must have the option to withdraw the application or participate without an alien who does not wish the State agency to contact INS to verify his or her status. We received only a few comments on the proposal to require State agencies to use the DOJ verification guidance in developing their verification procedures. One State agency thought that the proposal to make use of SAVE optional gave State agencies the authority to verify the immigration status of certain aliens only if questionable. This is clearly not the case. Verification of immigration status is mandatory for all applicant alien household members, whether or not a State agency elects to use SAVE. Another State agency felt that the Department should not adopt by reference unpublished DOJ rules which might impose burdensome verification requirements on State agencies. The Department recognizes the State agency's concerns, and the final rule deletes the reference to a future DOJ final rule. However, as stated previously, PRWORA section 432(a) charges DOJ with the responsibility for publishing rules for verification of alien status and citizenship. PRWORA section 432(b) requires State agencies to comply with such regulations. As of the date of publication of this final rule, DOJ has not published its final rule outlining the verification requirements. However, we understand that DOJ is making changes to the rule in response to the comments it received in the proposed rule. Once DOJ issues its final rule, the Department will review its provisions and determine if further rulemaking is appropriate for the Program.

We proposed a new paragraph (f)(1)(iv)(B) to address verification of alien eligibility when work history is questionable. Section 402(a)(2)(B) of PRWORA provides that aliens lawfully admitted for permanent residence may be eligible for food stamps if they can be credited with 40 qualifying quarters of work. The conforming amendment proposed here would provide that State agencies must obtain verification of eligibility based on 40 qualifying quarters of work before the State agency may certify the alien, unless the State agency or the applicant has submitted a request to SSA regarding the number of quarters of work that can be credited, SSA has responded that the individual has fewer than 40 quarters, and the individual or the State agency has documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. If the State agency can document that SSA is conducting an investigation, the individual may participate for up to 6 months from the date of the first determination that the number of quarters was insufficient for eligibility. This provision is based on an interpretation of the phrase ''has worked 40 qualifying quarters of coverage'' set forth in section 402(a)(2)(B)(ii) of PRWORA. An immigrant, under the express terms of section 402(a)(2)(B), would be eligible for food stamp benefits if the immigrant had actually worked 40 qualifying quarters of coverage, notwithstanding SSA's inaccurate or incomplete recording of the immigrant's work history. Food

stamp eligibility is premised on the immigrant's act of working the 40 quarters rather than SSA's recording of the immigrant's work history. Thus, in keeping with past practice concerning the receipt of benefits pending the completion of Federal government verification, we proposed to permit immigrants to receive food stamp benefits for a maximum period of 6 months. We emphasized that food stamp benefits pending the completion of an SSA investigation are only available to an alien who: (1) Is admitted as a lawful permanent resident under the Immigration and Nationality Act (INA), *i.e.,* an immigrant; (2) SSA has determined has fewer than 40 quarters of coverage; and (3) provides the State agency with documentation produced by SSA indicating SSA is investigating the number of quarters creditable to the alien.

One advocacy group felt that proposed 6-month period for resolution of quarters of coverage disputes with the SSA was arbitrary, unfair, and noncompliant with the SAVE statute. Moreover, they thought the Department should allow participation pending the outcome of any Federal agency's investigation of a matter which bears on the individual's eligible alien status, and the State agency's determination of ''battery or extreme cruelty,'' as long as the alien is cooperating with the investigation. We are partially adopting this suggestion in the final rule. The SAVE statute requires the Department to accept an alien's attestation of ''satisfactory'' alien status until verified through SAVE. However, PRWORA imposed new facets of verification of eligibility factors for aliens which go far beyond the verification of immigration status with the INS which the SAVE statute contemplates. For example, in addition to immigration status, status as a veteran and possession of 40 quarters of Social Security coverage now have a bearing on an alien's eligibility. As Congress did not amend the SAVE statute to provide for attestation of matters beyond those which the State agency can confirm through INS, we find no *mandate* to expand affirmation of status to encompass verification of information held in the files of other Federal agencies. Nor do we believe that Congress intended that we allow an indefinite period for completion of the verification process. After several years of operating under the 6-month limit, the Department is unaware of any instances where SSA was unable to complete a requested investigation within the established time frame. Accordingly, we are preserving this time frame in the final rule. However, the Department is using its discretionary authority to add to the final rule a provision requiring that State agencies certify the individual pending the results of an investigation for up to 6 months when the applicant or the State agency has submitted a request to a Federal agency for verification of information which bears on the individual's eligible alien status. For example, a State agency may find it necessary to contact the Department of Veterans Affairs to confirm an immigrant's veteran status. On the other hand, we are unable to extend the same procedure to an alien who is pursuing qualified alien status based on the outcome of a State agency's determination of battery or extreme cruelty. There is a real distinction between an alien seeking qualified status based on battery and an alien who already possesses an eligible immigration status. An alien cannot legally attest to food stamp eligibility based on an immigration status she does not yet possess. In order to have qualified aliens status, the alien must initiate a claim for such status *and* receive a favorable determination from the State agency. In this respect, such an alien is in the position of an asylum applicant or an applicant for naturalization. Unless and until INS actually grants the alien an eligible immigration status, he or she remains ineligible for the Program.

A commenter thought that State agencies could read the proposed rule to limit the verification of quarters of coverage to information contained in SSA's files. We did not intend such a reading of the rule. The commenter correctly pointed out that SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that SSA does not document, but is countable toward the 40 quarters test. In both of these cases, the individual, rather than SSA, would need to provide the evidence need to verify the quarters. While we believe that State agencies are following the SSA guidance for determining 40 quarters of coverage, we did reword the final rule to make these points clear. Finally, the same commenter thought that State agencies lack the resources to correlate 40 quarters of coverage information with the immigrant's possible participation in a Federal means-tested public benefit program during the time the quarters were earned by the immigrant, or by a parent or spouse. Consequently, the burden of verifying that quarters are countable would fall on the immigrant himself. The commenter urged the Department to limit verification of participation in a Federal means-tested public benefit program to those situations where the State agency knows of such participation based on a specific communication from SSA or because the State agency itself provided the federal means-tested public benefit at issue. Otherwise, the Department should permit States agencies to rely conclusively on reports of quarters from SSA and to be immune from subsequent QC scrutiny based on these decisions. The Department is unwilling to adopt this suggestion. First, such a policy likely would defeat the purpose of the statutory ban on counting quarters of Social Security coverage of immigrants who participate in Federal means-tested benefit programs while they are earning the quarters of coverage. Second, we are retaining that requirement that State agencies assist households in providing required verification. Accordingly, State agencies must devote sufficient resources to observe the statutory mandate with due diligence.

We proposed to remove current 7 CFR 273.2(f)(1)(ii)(F). That paragraph specifies that the State agency must provide alien applicants sufficient time (at least 10 days) to provide verification and that the State agency must provide benefits timely. The time period for providing verification would be included in the introductory text of paragraph (f). In as much as the Department is not revising this paragraph in the final rule, we are restoring, but revising, the provision in the final rule to delete the reference to acceptance of non-INS documentation.

How Must State Agencies Verify U.S. Citizenship or Non-Citizen National Status?

Paragraph (f)(2)(ii) currently provides requirements for verification of citizenship if a household's statement that a household member is a U.S. citizen is questionable. We proposed to combine paragraphs (f)(2)(i) and (f)(2)(ii) into a new paragraph (f)(2) and revise the provisions regarding verification of citizenship. We proposed to retain the requirement that State agencies verify citizenship only if it is questionable. We also proposed to retain the provision that participation in another program that requires verification of citizenship is acceptable proof of citizenship, if verification was obtained for the other program. As indicated above under the discussion of verification of alien eligibility, DOJ also has provided guidelines for verification of

citizenship. Therefore, we proposed to remove the verification guidance in current paragraph (f)(2)(ii) and provide in new paragraph (f)(2)(ii) that State agencies must verify citizenship in accordance with the DOJ guidance if a household member's citizenship status is questionable.

State agencies and advocacy groups generally supported the proposal to verify a statement of citizenship only when questionable. Several advocacy groups asked the Department to restore a deleted provision allowing a declaration from a citizen that the household member in question is a citizen. One State agency felt that the Department should not adopt by reference unpublished DOJ rules which might impose burdensome verification requirements on State agencies. The same State agency suggested that the Department allow State agencies to accept statements of parents on behalf of children who as minors obtained derivative citizenship when their parents naturalized. The State agency observes that many individuals cannot produce documentation of this category of derivative citizenship as the INS documents cost $160.

In response to comments, we are modifying the proposed language to add a requirement to verify the non-citizen national status of individuals whose status is questionable, in addition to the existing requirement to verify the U.S. citizenship of individuals whose citizenship is questionable. The addition conforms to the final language of section 273.4(a), as we are adding U.S. non-citizen nationals to the groups of individuals eligible for participation in the Program. We are restoring the language of the current regulations requiring State agencies to accept the written statement of a third party with personal knowledge of the household member's U.S. citizenship or non-citizen national status. We are retaining the requirement in the current regulations, that, absent verification or third party attestation of U.S. citizenship or non-citizen national status, the member whose citizenship is in question is ineligible to participate until the issue is resolved. State agencies must treat such an individual as an ineligible alien and treat the income and resources as set forth in section 273.11(c). Finally, we do not believe it is necessary to include a specific provision relating to verification of the citizenship of children who naturalize with their parents. Under the final rule, a naturalized parent, or other knowledgeable third party, could attest to the citizenship of the child, if the State agency had reason to question the child's citizenship.

Normal Processing—7 CFR 273.2(g)

Delays in Processing—7 CFR 273.2(h)

In the NPRM, we proposed to combine and revise the requirements in 7 CFR 273.2(g) and (h), which currently address the procedures for processing applications and handling delays in processing, respectively, and redesignate the new paragraph as 7 CFR 273.2(h). We proposed to include in new paragraph (g) provisions related to authorized representatives. This section is addressed below. The proposed changes to the requirements for application processing were made to allow State agencies to establish their own operating procedures and to give them more flexibility in processing applications.

In the NPRM, we proposed to amend new 7 CFR 273.2(h) as follows: (1) Retain in (h)(1) the policy contained in current paragraph (g)(1) that State agencies provide eligible households an opportunity to participate within 30 days of the date of application; (2) remove, as unnecessary, the third sentence of current paragraph (g)(1) referring to the special procedures in 7 CFR 273.2(i) for expedited service; add to new paragraph (h)(1) the first sentence of current paragraph (g)(3), which requires that a notice of denial be sent within 30 days if the household is found to be ineligible; and (4) delete the remainder of current paragraph (g)(3) to enhance State agency flexibility.

We also proposed to add a new paragraph (h)(2) which would require State agencies to continue to process cases if the State agency is at fault for not processing the case within the 30-day time period. If the State agency is at fault for delaying the application process, benefits would be restored back to the application filing date. If the household is at fault for the delay, the State agency may either deny the case or hold it pending for an additional period of time to be determined by the State agency but not more than 2 months. If the household is at fault for the delay, benefits would be provided retroactive to the date the household takes the required action.

We also proposed to add a new paragraph (h)(3), which would retain, but consolidate, the current procedures for determining the cause of a delay. Delays that are the fault of the State agency include, but are not limited, to failure to explore and attempt to resolve with the household any unclear and incomplete information provided at the interview; failure to inform the household of the need for one or members to register for work and allow the members at least 10 days to complete work registration; failure to provide the household with a statement of required verification and allow the household at least 10 days to provide the missing verification; and failure to notify the household that it could reschedule a missed interview. Delays that are the fault of the household include, but are not limited to, failure to cooperate with the State agency in resolving any unclear or incomplete information provided at the interview; failure to register household members for work; failure to provide missing verification; and failure to reschedule a missed interview appointment.

Finally, we proposed that 7 CFR 273.2(g)(2), which addresses the issuance of combined allotments for households that apply after the 15th of the month, be redesignated with minor editorial changes as 7 CFR 273.2(h)(4).

As with many of the other provisions in the NPRM, the comments received on our proposed changes to 7 CFR 273.2(h) were mixed. On the one hand, several commenters were very supportive of the proposals, especially our decision to remove much of the prescriptive language regarding handling of applications when the decision is delayed beyond 30 days. Many of these commenters, however, requested further simplification to the regulations. Several commenters again requested that we amend the regulations to allow State agencies to take immediate action to deny an application after a missed interview or the expiration of the 10-day period for return of requested information.

On the other hand, many commenters opposed the Department's proposal to repeal provisions in existing paragraphs (g) and (h) which address client protections. For example, one commenter objected to our proposal to remove the requirement at current 7 CFR 273.2(h)(2)(A) that the State agency reopen a case that has been denied for failure to take a required action if the household takes the required action within 60 days from the date of application. The commenters noted that without this provision, households can be required to submit a new application and restart the application process even though they have produced the verification necessary to determine their eligibility, which may cause some households to be discouraged and abandon their efforts to obtain food stamps. The same commenters opposed the Department's proposed rewording of the current requirement at 273.2(h)(1)(i)(C). This provision provides that where verification is

incomplete, the State agency must provide the household with a statement of required verification, offer to assist the household in obtaining required verification, and allow the household sufficient time to provide the missing verification. Sufficient time is defined as at least 10 days from the date of the State agency's initial request for the ''particular verification'' that was missing. In the NPRM, we dropped the words ''particular verification.'' Although no change in policy was intended, some commenters felt that dropping the words could potentially weaken the principle significantly. For example if the household presents verification that is deemed insufficient by the State agency, the household may not have sufficient time left in the 10-day period to get the specific documentation requested by the State.

Given the considerable disagreement among commenters on our proposals to amend existing paragraphs (g) and (h), and the Department's commitment to ensuring that all food stamp applicants and participants receive timely, accurate and fair service, we have decided to withdraw the proposed changes and retain current rules, with one exception as discussed below.

One commenter pointed out that some States require prolonged job searches prior to registering persons for work in their TANF-funded programs. To avoid confusion, this commenter argued, the rules at 7 CFR 273.2(h)(i)(B) should clarify that households cannot be denied food stamp work registration on that basis. In addition, because some persons with disabilities may feel it would be dishonest to register if they are unable to work, no household should have its application delayed or denied for failure to register unless the food stamp office has reviewed the possibility of an exemption. We agree with this commenter, but believe that program policy has always called for the resolution of work registration status before any food stamp work requirement may be imposed. Therefore, at 7 CFR 273.2(h)(i)(B), we are clarifying that State agencies determine if an individual is exempt from work registration prior to requiring a household member to register.

Authorized Representatives—7 CFR 273.2(g)

In the NPRM, we proposed to redesignate the provisions of current 7 CFR 273.1(f) on authorized representatives as paragraph 7 CFR 273.2(g). We also proposed to move into that new section all of the requirements governing use of authorized representatives that appear in 7 CFR 273.1(f), 7 CFR 273.11(e) and (f), and 7 CFR 274.5, and to condense and revise those requirements. We also proposed to (1) move the provisions for using treatment centers and group homes as authorized representatives currently located at 7 CFR 273.1(f)(2) to 7 CFR 273.11(e) and (f); (2) remove the introductory paragraph of 7 CFR 273.1(f)(2) because it is unnecessary; (3) include the discussion in 7 CFR 273.1(f)(2)(1)(i) regarding drug and alcohol treatment centers in 7 CFR 273.11(e)(1) in place of the reference to 7 CFR 273.1(f)(2); (4) move the first, second, fourth, fifth, and last sentences in current 7 CFR 271.2(f)(2)(ii) regarding group living arrangements into 7 CFR 273.11(f)(1); move the sixth sentence of current 7 CFR 271.2(f)(2)(ii) into 7 CFR 273.11(f)(7); (5) remove the remainder of 7 CFR 271.2(f) because it is unnecessary; (6) add a reference to 7 CFR 273.11(e) and (f) to new paragraph 7 CFR 273.2(g)(1)(iii); and (7) remove 7 CFR 273.1(f) and 7 CFR 274.5.

We proposed to entitle 7 CFR 273.2(g)(1) ''Applying for benefits.'' We proposed to include in new paragraph (g)(1)(i) the provisions of current 7 CFR 273.1(f), (f)(1)(i) and (f)(1)(ii) with minor editorial changes. The new paragraph would include the current provisions that allow an authorized representative to act for the household in the application process and to complete work registration forms for those household members required to register for work. It would also continue to require the State agency to inform the household of its liability for overissuances which result from erroneous information given by the authorized representative. We would also remove current paragraph (3) regarding nonhousehold members who can apply for minors and include the content in new paragraph (f)(ii).

We also proposed to remove the information in introductory paragraph 7 CFR 274.5(a) and the first sentence of paragraph (b) because they are unnecessary. The contents of paragraph (a)(1) and the second sentence of paragraph (a)(2) would be included in new paragraph (g)(2) entitled ''Obtaining food stamp benefits'' with minor editorial changes. The new paragraph would include the current provisions for encouraging the household to name an authorized representative for obtaining benefits at the time of application, that the representative's name be recorded in the household's case file and on its ID, and that the representative for obtaining benefits may be the same person designated to make application on behalf of the household. In the new paragraph (g)(2)(ii), we proposed to include a reference to 7 CFR 274.10(c) which provides for designating an emergency authorized representative subsequent to the time of certification.

We proposed to add a new paragraph (3) entitled ''Using benefits.'' This paragraph would include the information currently contained in 7 CFR 274.5(a)(6) and (7) and 274.5(c). The last sentence in 7 CFR 274.5(c) which prohibits a person disqualified for committing an intentional Program violation from using benefits on behalf of the household would be removed.

We also proposed to combine the current restrictions on designating authorized representatives in 7 CFR 273.1(f)(4) for application processing and 7 CFR 274.5 for obtaining benefits into proposed paragraph 7 CFR 273.2(g)(4), entitled ''Restrictions on designations of authorized representatives.'' We proposed to revise the provisions to omit examples and other unnecessary language. Proposed paragraph (4)(i) would provide that State agency employees involved in certification and issuance and retailers authorized to accept food stamp benefits may not act as authorized representatives without the specific written approval of the designated State agency official and only if that official determines that no one else is available to serve as an authorized representative. Proposed paragraph (4)(ii) would provide that individuals disqualified for intentional Program violations cannot act as authorized representatives while they are disqualified unless no one else is available. Proposed paragraph (4)(iii) would include the provisions for disqualifying authorized representatives for misrepresentation or abuse, and paragraph (4)(iv) would contain the current provision that homeless meal providers may not act as authorized representatives for homeless food stamp recipients. Proposed paragraph (4)(v) would allow the State agency to restrict the number of households an authorized representative may represent.

Our proposal to consolidate the provisions on authorized representatives into one section of the regulations was generally well received by commenters. One commenter did object to our proposal to remove the requirement currently contained at 7 CFR 274.5(a)(2) that requires food stamp offices to take steps to ensure that farm workers are acting voluntarily when they designate a grower or labor contractor as their authorized representatives. The commenter noted that since employers have so much leverage over farm workers, they and their family members should be

prohibited from serving as authorized representatives unless it is clear that the household needs such assistance and has no one else to whom to turn. We concur with the commenter that the potential for fraud and abuse still exists in such situations and are therefore reinstating the requirement.

Several commenters objected to the proposal in 7 CFR 273.2(g)(4)(iii) to exempt drug and alcohol treatment programs from disqualification in cases of fraud. The commenters thought that fraudulent acts committed by substance abuse treatment centers should be treated in the same manner as similar acts by retailers. One commenter asked that FNS provide instructions in these regulations on what actions States should take when it is discovered that a treatment center or group home knowingly provided false information or misused benefits.

Current regulations at 7 CFR 274.5(d) provide that drug and alcohol treatment centers and the heads of group living arrangements which act as authorized representatives for their residents and which intentionally misrepresent households circumstances may be prosecuted under applicable State fraud statutes for their acts. We are amending the proposed regulations on authorized representatives to include this provision.

One commenter thought that proposed regulations at 7 CFR 273.2(g)(1) addressing when a household may use an authorized representative are too limiting for households with disabilities. The commenter thought that persons with disabilities should be permitted to nominate an authorized representative in cases where completing the application process would be unusually burdensome for them but not literally impossible.

The proposed regulations at 7 CFR 273.2(g)(1) permit a household to utilize an authorized representative when ''a responsible member of the household cannot complete the application process.'' We believe that this language is sufficiently broad to allow persons with disabilities who may find completing the application process unduly burdensome to utilize an authorized representative. Therefore, we are not changing the proposed provision.

The same commenter thought that proposed regulations at 7 CFR 273.2(g)(ii) preclude non-household members from serving as authorized representatives except for those cases in which the non-household member is the only adult in the household. We disagree with the commenter. The proposed regulations at 7 CFR 273.2(g)(1)(i) clearly state that a non-household member may be designated as an authorized representative and does not limit that authority to situations in which the nonmember is the only adult in the household.

A commenter thought that the proposed regulations should be amended to permit households to designate authorized representatives to carry out household responsibilities during the certification period, such as submitting reports on changes in household circumstances, as well as at application.

The Department did not intend for the proposed regulations to prohibit authorized representatives from carrying out household responsibilities during the certification period. We recognize that there may be instances in which a household cannot satisfy program requirements after certification, such as submitting information on changes in household circumstances. Therefore, we are amending the proposed regulations at 7 CFR 273.2(g)(1) to provide that the authorized representative designated for application processing purposes may also fulfill household responsibilities during the certification period. The household will be liable for any overissuances that results from erroneous information given during the certification period by the authorized representative.

One commenter requested that the proposed language at 7 CFR 273.2(g)(1)(iii) be clarified regarding the use of authorized representatives for individuals residing in group living arrangements. The provision requires that residents of drug or alcohol treatment centers and group homes apply and be certified for food stamps through the use of authorized representatives in accordance with sections 273.11(e) and (f). The commenter noted that regulations at 7 CFR 273.11(f) allow residents of a group home to apply either through the center's authorized representative or on their own behalf. We are clarifying the regulations at 7 CFR 273.2(g) to note the distinction in the requirements to use authorized representatives that exist for residents of drug or alcohol treatment centers and group homes.

We are adopting the proposed regulations on authorized representatives as final with the changes noted above, including those changes to § 273.11(f). However, because we are retaining current regulations at 7 CFR 273.2(g), we are designating the section on authorized representatives as 7 CFR 273.2(n).

Expedited Service—7 CFR 273.2(i)

In the NPRM, we proposed to amend 7 CFR 273.2(i), which lists the categories of households entitled to expedited service and establishes the procedures that State agencies must use in providing that service. Section 838 of PRWORA amended Section 11(e)(9) of the Act, (7 U.S.C. 2020(e)(9)) by removing households consisting entirely of homeless people as a category of households entitled to expedited service and increasing the number of days which State agencies have to provide expedited service from 5 to 7 calendar days. We proposed to implement the changes resulting from section 838 of PRWORA by amending 7 CFR 273.2(i) as follows: (1) removing the reference to homeless households in current paragraph (i)(1)(iii); (2) renumbering paragraph (iv) as (iii); and (3) changing the expedited processing time frame appearing in current paragraph (i)(3) from 5 days to 7 days.

Our proposals to amend 7 CFR 273.2(e) to implement the requirements of section 838 of PRWORA have already been finalized in another rule, the Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, published on October 30, 2000 (65 FR 64581). Please refer to that rule for a complete understanding of the final provisions.

In addition to making the changes to 7 CFR 273.2(i) mandated by PRWORA, we also proposed to amend the section by removing repetitive definitions and simplifying the procedures for providing expedited service.

Comments received on the proposed discretionary changes were mixed. Some commenters, while supporting the increased flexibility provided under the revised regulations, thought the Department should go still farther in simplifying expedited service requirements for State agencies. For example, one commenter opposed the regulations at the renumbered paragraph (i)(6), which provide no limit on the number of times a household can be certified under expedited service procedures. The commenter saw no logical reason why households that fail to submit timely recertification applications should be rewarded with the ability to receive benefits expeditiously, and preferred that expedited service be reserved to households newly applying and those who have been off the program for a month. Other commenters felt that the revised regulations failed to contain sufficient provisions protecting customer rights. One commenter thought that the food stamp office

should be required to contact households that submit incomplete applications promptly to request more information and to inform them that they may be eligible for expedited issuance based on gross income, liquid resources, and shelter costs. In addition, the commenter thought that application forms should be required to have a prominent place on or near the front where the household can indicate its gross income, liquid resources, shelter costs, and status (or not) as a migrant or seasonal farm worker. The commenter thought that if a ready opportunity is offered to provide this information, many households are likely to do so, facilitating the screening for expedited issuance of applications that are mailed in or dropped off by applicants whose work schedules prevent them from waiting to meet with agency staff.

Given the considerable disagreement among commenters on our proposals to amend paragraph (i), and the Department's commitment to ensuring that all food stamp applicants and participants receive timely, accurate and fair service, we have decided to withdraw the proposed changes and retain current rules.

PA, GA and Categorically Eligible Households—7 CFR 273.2(j)

As noted in the proposed rule, section 835 of PRWORA amended section 11(e) of the Act to eliminate the mandate for the joint processing of applications for households in which all members are receiving public assistance (PA), supplemental security income (SSI), or general assistance (GA). However, State agencies retained the option to continue to jointly process these cases. Accordingly, we proposed in the NPRM to revise current paragraph (j) in its entirety. Specifically, we proposed to revise the paragraph as follows: (1) retain pertinent provisions related to the categorical eligibility of certain households for the Food Stamp Program; (2) remove provisions or references associated with mandatory joint application processing; and (3) retain those joint processing provisions we believe are necessary to protect the client should a State agency opt to continue joint processing of TANF, SSI or GA households.

We received a large number of comments opposing the changes made in the NPRM to paragraph (j). Many commenters felt that our proposal removed too many existing safeguards for applicants. For example, some commenters thought that many of the provisions in current paragraph 7 CFR 273.2(j)(1)(iv) should be retained, including the provision which requires a food stamp office to postpone denying the application of a household that is applying for TANF-funded benefits and that would be categorically eligible for food stamps if the household's TANF application is approved, and the provision which requires that notices denying food stamps to households with applications pending for cash assistance or SSI should inform the household that it should notify the food stamp office if its cash assistance or SSI benefits are approved.

Commenters requested that we restore many other provisions as well, including the provision in current section 273.2(j)(1)(iii) which prohibits food stamp offices from delaying a household's food stamp benefits beyond 30 days if the State has sufficient verification to determine food stamp eligibility even if it is waiting for further information it needs to determine the family's eligibility for TANF-funded benefits, and the provision in current section 273.2(j)(4)(vi) which does not require that all household members receive benefits from the same assistance program to be categorically eligible for food stamps.

Given the considerable opposition raised by commenters to our proposed changes to 7 CFR 273.2(j), we are withdrawing most of those changes at this time. The existing provisions in paragraph (j) promote program access among recipients of other assistance programs, and we agree with the commenters that, given the Department's commitment to ensuring program access and to providing timely, accurate and fair service to applicant and participants, the provisions should be retained at this time.

However, we are making several changes to paragraph (j) to reflect changes in the Act brought about by PRWORA and to address comments received on the NPRM.

Section 835 of PRWORA amended section 11(e) of the Act to eliminate the mandate for joint application processing for households in which all members are receiving PA, SSI, or GA. However, State agencies may opt to continue to jointly process these cases. To reflect this change in the law, we are amending the introductory paragraph of (j), and paragraphs (j)(1)(i) and (j)(3).

Several commenters were disappointed that the proposed regulations did not require food stamp offices to inform households that TANF time limits or other requirements do not apply to the receipt of food stamp benefits. These commenters cited recent studies which indicate that many families that are eligible for food stamps are leaving the program at the same time their cash assistance cases are closed. The commenters feared that many of these households are prematurely leaving the Food Stamp Program because of the erroneous belief that they are no longer eligible for food stamps when they lose eligibility for TANF.

Participation in the Program is a vital component of the transition from welfare to work. Eligible households that fail to take advantage of the Program because of confusion over the linkage between TANF and food stamp eligibility lose a vital nutritional support and jeopardize their ability to become self-sufficient. Therefore, we agree with the commenters that food stamp applicants and recipients that also participate in the TANF program should be informed that their eligibility for food stamps does not necessarily cease when they lose eligibility for TANF. We are amending the regulations at 7 CFR 273.2(j)(1) to require that the State agency notify households applying for TANF that the time limits or other requirements that apply to the receipt of TANF benefits do not apply to the receipt of food stamp benefits. Further, State agencies must notify such households that if TANF benefits cease because they have reached a time limit, have begun working, or for other reasons, they may still qualify for food stamp benefits. We are making a similar amendment to 7 CFR 273.2(e)(1).

One commenter expressed concern that in an attempt to divert households from applying for TANF, State agencies may inadvertently be diverting households from applying for food stamps. This commenter suggested we include language reminding State agencies not to discourage households from applying for food stamps. In response to this comment and in an attempt to increase Program access, we are providing at 273.2(j) that if the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

One legal assistance group commented that a local welfare agency required joint applicants for food stamps and cash assistance to submit to at least five separate interviews in its process for determining eligibility. Failure of the household to attend any one of these interviews or to provide

verification of circumstances as required under the cash assistance rules will result in denial of the application. This is the case even if the household submitted verification which would be acceptable in a food stamp only case. The current regulations allowing State agencies to use PA verification rules for factors of eligibility which are common to both food stamps and cash assistance could be read to sanction the local agency's practices. However, it was never the Department's intent that a household could be denied both food stamps and cash assistance, if it had complied with the food stamp verification requirement, but had failed to comply with a more stringent cash assistance requirement. While the Department believes that the language of the current rule expresses this intent, it is apparent that it is subject to interpretation in ways not in consonance with our policy. Accordingly, the final rule amends 7 CFR 273.2(j)(1)(iii) to clarify this intent. State agencies may continue to use PA verification rules for factors of eligibility which are common to both food stamps and cash assistance; however, the State agency may not deny the household's food stamp application if it has provided sufficient verification in accordance with food stamp rules. For example, a State agency may not deny a household's food stamps under joint processing, if it has submitted verification of its circumstances sufficient for food stamp purposes, but fails to submit to a home visit required for cash assistance purposes.

Several commenters thought that the final rules at 7 CFR 273.2(j) should be updated to incorporate the substance of the Department's July 14, 1999, guidance on categorical eligibility as well as the key points of clarifying questions and answers it has issued since. The guidance clarified categorical eligibility in the Program by stating that it applies not just to households receiving cash assistance under TANF-funded programs but also to those receiving or authorized to receive non-cash or in-kind benefits or services from such programs.

We agree with the commenters and are amending paragraph (j)(2) to incorporate into current regulations much of the Department's July 14, 1999, guidance on categorical eligibility, with modifications. It has come to our attention that this policy has allowed State agencies to use categorical eligibility beyond the scope of what was originally intended. The original intent of categorical eligibility was to reduce the administrative burden on State agencies by simplifying the certification process and eliminating the need for the eligibility worker to apply two different income eligibility tests for a household applying for public assistance and food stamps. Therefore, Congress allowed the State agency to apply the public assistance income and resource tests to applicants of both programs, thus eliminating the need to satisfy a second income eligibility test for the Food Stamp Program. However, the context for categorical eligibility changed after PRWORA, particularly because TANF is a block grant and can be used to support in-kind and non-cash benefits and services to low-income working families who may or may not be required to meet income eligibility criteria. The four purposes of the TANF block grant are to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families. Funds spent to meet the first and second purposes of the block grant must be spent on ''needy families'', as defined by the State, and thus applicants must meet the State's definition of ''needy''. Funds spent to meet the third and fourth purposes of the block grant are not limited to ''needy families.'' In general, States have designed their TANF cash assistance programs and support services for families who meet income eligibility criteria. However, some TANF services do not have income eligibility criteria. We believe that it is inappropriate to confer food stamp eligibility without income eligibility criteria. Therefore, in this regulation, we are modifying the policy that was set forth on July 14, 1999. We have decided to confer categorical eligibility to all households authorized to receive TANF funded benefits and services designed to further TANF purposes one and two, which by statute must be targeted to ''needy families.'' In addition, we have decided to confer categorical eligibility to all households authorized to receive TANF funded benefits and services designed to further TANF purposes three and four, as long as those services have income eligibility criteria set at 200 percent of the Federal poverty level or lower. We made this decision in order to (1) ensure that only TANF benefits and services with income eligibility criteria confer categorical eligibility, and (2) maximize the usefulness of categorical eligibility based upon an analysis by HHS which determined that for services with income eligibility criteria, such criteria tend to be set at 200 percent of the Federal poverty level or lower (although some States may have income eligibility criteria at higher levels).

At the same time, we realize that some households no longer qualify for cash assistance simply because they have reached a time limit. Some households, simply by virtue of their past participation in the TANF cash assistance program, receive post-assistance transitional benefits, such as child care. Such programs are covered by the categorical eligibility policies described above. If transition services are designed to further TANF purposes one and two, they confer categorical eligibility since those households must meet the State's definition of ''needy''. If transition services are designed to further TANF purposes three and four, they confer categorical eligibility as long as the transition services have an income eligibility test set at 200 percent of the Federal poverty level or below. Though we believe that the regulations as written cover these individuals, where States have discretion pursuant to this rule and as described below, we are urging them to identify such programs as conferring categorical eligibility for food stamp purposes.

We realize that there are several State agencies that have identified programs to confer categorical eligibility for food stamps that are designed to further purposes three and four of the TANF block grant and that either have income eligibility criteria above 200 percent of the poverty level or have no income eligibility criteria at all. In order to satisfy the new requirements of this rule, we recognize that State agencies will need time to adjust processes so that certain programs no longer confer categorical eligibility. Therefore, in order to give State agencies the necessary time to make these changes, we are providing that State agencies may continue to use these programs to confer categorical eligibility for food stamp purposes until September 30, 2001.

Based on the above discussion, in this rule at 273.2(j)(2), households that meet the following requirements would be categorically eligible: (1) households in which all members receive or are authorized to receive cash assistance through a program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A; (2) households in which all members receive or are

authorized to receive non-cash or in-kind services or benefits from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes one and two of the TANF block grant; (3) households in which all members receive or are authorized to receive non-cash or in-kind services or benefits from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the TANF block grant and that requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level; (4) households in which all members receive or are authorized to receive SSI benefits, and (5) households in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with (j)(2)(i)(A) though (j)(2)(i)(D) of this section.

Also, State agencies have the option to extend categorical eligibility to the following households if doing so will further the purposes of the Food Stamp Act: (1) households in which all members receive or are authorized to receive non-cash or in-kind services or benefits from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes one and two of the TANF block grant. States must inform FNS of the TANF services that confer categorical eligibility under this option; (2) subject to FNS approval, households in which all members receive or are authorized to receive non-cash or in-kind services or benefits from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the TANF block grant and that requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level; (3) households in which one member receives or is authorized to receive benefits according to (j)(2)(i)(B), (j)(2)(i)(C), (j)(2)(ii)(A) and (j)(2)(ii)(B) of this section and the State agency determines that the whole household benefits.

In response to comments and to incorporate current policy, we are including at 273.2(j) the definition of ''authorized to receive.'' For purposes of this provision, ''authorized to receive'' means that an individual has been determined eligible for benefits under PA program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A, and has been notified of this determination, even if the benefits have been authorized but not received, authorized but not accessed, suspended or recouped, or not paid because they are less than a minimum amount.

Finally, several commenters requested that FNS amend current rules at section 273.2(j)(2)(vii)(F) which prohibit States from denying categorically eligible households when they are eligible for no food stamp benefit. One commenter noted that as a result of the Department's July 1999 guidance on categorical eligibility, significantly more households are likely to be categorically eligible but eligible for no food stamp benefit due to their income. To require States to certify such households for zero benefits would be administratively burdensome and could discourage States from adopting expansive categorical eligibility policies. The commenter recommended that the regulations should be revised to give States the same option to treat categorically eligible households that are eligible for zero benefits in the same manner as they treat households that are not categorically eligible: where a household's net income exceeds the level at which benefits are provided, States should be allowed to choose between denying the application or certifying the case but suspending benefits.

We agree with the commenters that allowing States to deny categorically eligible households when they are eligible for no food stamp benefit would alleviate administrative burdens on States and eliminate a potential barrier to States adopting more expansive categorical eligibility policies. Therefore we are amending current rules at section 273.2(j)(2)(vii)(F) to make this change.

Alien Eligibility—7 CFR 273.4

We proposed to revise 7 CFR 273.4(a) to remove references to those aliens no longer eligible and add provisions referencing the alien provisions of Title IV of PRWORA, as amended. We also proposed to revise the section to remove unnecessary and overly prescriptive requirements. As discussed above, we also made conforming amendments to 7 CFR 273.2(f)(1)(ii) to address verification of alien eligibility under the new alien eligibility requirements and to reference the DOJ Interim Guidance.

What is a Citizen?

We proposed to add a reference in paragraph (a)(1) to the DOJ Interim Guidance which includes a definition of the term ''citizen.'' Several commenters pointed out that they could not find this reference in the regulatory amendment. We inadvertently omitted this reference in the proposed rule; however, it appears in the text of the final rule.

We proposed to add the term ''non-citizen national'' to paragraph (a)(2) to clarify that non-citizen nationals are eligible to participate. Several commenters pointed out that the term appearing in the regulatory text, ''alien national,'' was not usual DOJ terminology. The use of this term was a drafting error. The final rule uses the term ''non-citizen national'' and includes a reference to the definition in the DOJ Interim Guidance.

What is a Qualified Alien?

In accordance with section 431 of PRWORA, we proposed to define a qualified alien as:

(1) an alien who is lawfully admitted for permanent residence under the INA;

(2) an alien who is granted asylum under section 208 of the INA;

(3) a refugee who is admitted to the United States under section 207 of the INA;

(4) an alien who is paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;

(5) an alien whose removal or deportation is being withheld under section 241(b)(3) or 243(h) of the INA;

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) a battered alien, an alien whose child has been battered, or an alien child of a battered parent; or

(8) a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

Several State agencies objected to the requirement that State agencies determine if an alien has been subjected to ''battery or extreme cruelty'' with respect to establishing qualified alien status. Some State agencies and many advocacy groups suggested that we establish national standards for State agency use in making determinations of ''battery or extreme cruelty.'' One State agency worried that FNS would scrutinize ''battery or extreme cruelty'' determinations through the Quality Control process. While national standards for such determinations might be good public policy, Congress clearly delegated the authority for making such decisions to the States, assisted by

guidance from the U.S. Attorney General. (See Exhibit B to Attachment 5 of the DOJ Interim Guidance.) We can find no authorization to preempt the States' authority in these matters. Moreover, we believe the Attorney General's Interim Guidance is sensible and comprehensive. We defer to her expertise in immigration matters and feel that State agencies would do well to follow her suggestions. Accordingly, we are not changing the proposed language in the final rule. We do wish to point out that FNS does not intend to review State agency ''battery or extreme cruelty'' determinations through the food stamp QC process. The Department has no mandate to question the substance of State agency determinations on this issue. However, once a State agency makes a ''battery or extreme cruelty'' determination, food stamp QC will assess whether the State agency timely and correctly applied its determination to the food stamp case under review.

Which Aliens Must Be Both Qualified Aliens and Food Stamp Eligible Aliens?

To be eligible for food stamps, most aliens must be both a qualified alien as defined in section 431 of PRWORA and meet one of the food stamp criteria in section 402 of PRWORA. Section 402, as amended by the Balanced Budget Act, limits eligibility for food stamps to qualified refugees, asylees, deportees, specified Amerasians, Cuban and Haitian entrants, certain legal permanent residents, and veterans and active duty personnel and the spouse and unmarried dependent children of the veterans and active duty personnel. We proposed to include the list in paragraph (a)(5)(ii).

We received numerous comments on the iteration of aliens who must have qualified alien status and food stamp eligible status. Several State agencies and many advocacy groups requested that the Department clarify the regulation to indicate that each category of eligible immigration status stands alone for purposes of determining eligibility. For example, a refugee is eligible for 7 years from the date of entry, even if he or she adjusts status to lawful permanent resident status later during that 7-year period. We thought the regulation language was clear that, as illustrated in the example, adjustment to a more limited status does not override eligibility based on an earlier less rigorous status, or that if eligibility expires in one eligible status, the alien may yet be eligible under another. However, in view of the comments, we are adding a paragraph to the final rule to emphasize this point. A number of commenters thought the Department should require that State agencies provide a 1 to 2 year advance warning to aliens in a time-limited eligibility status that they are approaching the limit and that to continue participating they have some other basis of eligibility once they reach the limit. We are not adopting this suggestion, as we are reluctant to impose this burden on State agencies. We believe that Program informational materials directed to immigrant populations adequately explain the food stamp eligibility requirements for aliens and that the immigrant community is well aware of the time limits and other requirements. Moreover, we have doubts about the utility of the suggestion. Through the policy changes in PRWORA, Congress intended to provide impetus to aliens to become naturalized citizens as soon as possible. Consider the case of a refugee couple who have continuously worked and participated in the Program for 5 years since they entered the U.S., and have adjusted to lawful permanent resident status. Unless that couple has diligently pursued meeting all the requirements for naturalization, a warning at the end of the 5th or 6th year will come too late. After the 7-year period expires, and these aliens have not naturalized, they will likely lose food stamp eligibility, as none of the quarters of social security coverage will count due to their participation in the Program. A State agency thought that aliens with a pending application for lawful permanent resident status should remain eligible, even though the 7-year period of eligibility had expired. The Department cannot adopt this suggestion, as the statute does not allow such treatment.

What Are the Requirements for Eligibility as a Lawful Permanent Resident?

Under section 402(a)(2)(B) of PRWORA, the eligibility of aliens lawfully admitted for permanent residence is limited to those who have earned or can be credited with 40 qualifying quarters of work. An alien may get credit for all of the qualifying quarters worked by a parent of the alien before the alien becomes age 18 and the quarters worked by a spouse of the alien during their marriage, if they are still married or the spouse is deceased. We proposed to include this requirement in the introductory language of the new paragraph (b)(1).

To establish eligibility based on 40 quarters of work, the State agency may request information from the Social Security Administration through the Quarters of Coverage History System (QCHS) and/or obtain verification from the household. State agencies may request and receive information regarding qualifying quarters from SSA according to SSA instructions. For each individual (other than the person who signed the application) whose SSN is submitted to SSA with a request for quarters of coverage information, the State agency must obtain a signed form consenting to the release of the information. This form is to be filed in the household's case file. Section 5573 of the Balanced Budget Act authorizes SSA to disclose quarters of coverage information concerning an alien and an alien's spouse or parents to other government agencies. Therefore, if the household needs quarters of coverage based on relationship and it cannot obtain a signed form, the State agency may submit a request to SSA for information regarding the individual's work history. These requests will be processed manually by SSA. Procedures for requesting information from SSA are contained in SSA's manual for obtaining quarters of coverage information.

Aliens who can be credited with 40 qualifying quarters, as reported by SSA, would be certified, if otherwise eligible. Those who do not have 40 quarters according to SSA records and who accept that determination would be denied participation. However, individuals who believe they should be credited with more quarters of work may request that SSA investigate their work history to determine if more quarters can be credited. As indicated above under the discussion of verification of alien eligibility, we proposed to require that if SSA is conducting an investigation to determine if more quarters can be credited, the applicant may participate pending the results of the investigation for up to 6 months from the date of SSA's original finding of insufficient quarters. We proposed a conforming amendment to include this requirement in the verification requirements in new 7 CFR 273.2(f)(1)(iv)(B).

SSA has prepared guidance for State agencies to use in requesting work history information through the QCHS. Through this system, State agencies are able to obtain information about work performed in jobs covered by Title II of the Social Security Act and some work that is not covered by Title II, such as some employment with Federal, State, or local governments or nonprofit organizations. If the State agency cannot obtain work history information from SSA, the State agency will have to obtain verification of work from the applicant or other available data

sources. This will always be the case for recent quarters (lag quarters) worked because of the time it takes SSA to update the database using the most recent tax returns.

Section 402(a)(2)(B)(ii) of PRWORA also provides that no qualifying quarter creditable for a period beginning after December 31, 1996, can be included as one of the credited quarters if the individual received any Federal means-tested public benefit (as provided under section 403) during that quarter. Section 435 of PRWORA provides that no qualifying quarter for any period after December 31, 1996, by a parent or spouse of the alien may be included if the parent or spouse received any Federal means-tested public benefit during that quarter. Section 403(c) includes a list of types of assistance or benefits that are exempt from the prohibition (exempt assistance). The list includes: certain emergency medical assistance; short-term, non-cash emergency disaster relief; assistance under the National School Lunch Act; assistance under the Child Nutrition Act of 1966; certain non-Title XIX public health assistance; certain foster care and adoption payments; student assistance provided under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act; benefits under the Head Start Act; and benefits under the Workforce Investment Act. The list also includes in-kind services which may not be means-tested, such as soup kitchens and short-term shelter, specified by the Attorney General. The DOJ published a Notice in the **Federal Register** on August 30, 1996 (61 FR 45985), containing a non-exclusive list of the types of exempt in-kind services.

Each Federal agency which issues means-tested public benefits is responsible for identifying and publishing a list of benefits to which the term ''Federal means-tested public benefit'' as used in PRWORA applies. According to **Federal Register** notices published by HHS (62 FR 45256) and SSA (62 FR 5284) on August 26, 1997, TANF, Medicaid, and SSI are Federal means-tested public benefits. According to a **Federal Register** notice published by this Department on July 7, 1998 (63 FR 36653), the Food Stamp Program and the block grant food assistance programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands are the only FNS program to which the term applies. We proposed that ''received'' means that the alien actually received the assistance or food stamps in the quarter in question.

Several commenters suggested that we specify in the regulations the programs which are Federal means-tested public benefits. We are not adopting this suggestion, since we do not wish to amend the regulations every time a Federal agency adds a program to the list. However, we do intend to keep a current list posted on the FNS web site, so that interested parties will have easy access to this information.

We proposed to provide in paragraph (a)(5)(ii)(A) that if an alien was determined eligible for any Federal means-tested public benefit as defined by the agency providing the benefit or was certified to receive food stamps during any quarter after December 31, 1996, the quarter cannot be credited toward the 40-quarter total. Likewise, if the alien needs a quarter from a parent or spouse, the parent or spouse's quarter cannot be counted if the parent or spouse was determined eligible for any Federal means-tested public benefit or was certified to receive food stamps during the quarter. For example, if the alien worked and the alien's parents received SSI in the first quarter of 1997, the alien would have one quarter counted because the alien worked and did not receive assistance; if the alien did not work but the alien's parents worked and received SSI, the alien would not have any countable quarters.

The Department received several comments on the 40 quarters of coverage provisions. One commenter thought that the Department should specify that a quarter earned by a parent or spouse is creditable to the worker and transferable to the spouse or child even when the child of the parent or the spouse receives a federal means-tested public benefit. The Department cannot adopt this suggestion as it violates the clear language of the statute. Moreover, SSI follows the same policy. The same commenter suggested that the Department should mandate that quarters worked before a child is born or adopted are creditable. We are adding clarifying language in the final rule as such a policy was our intent. The same commenter urged the Department to make it clear that up to four quarters can be earned in any year when an immigrant has sufficient earnings during periods of nonreceipt of benefits. The commenter further suggested that the Department structure the computation of qualifying quarters so that an alien could evade the strictures of the statute by foregoing receipt of a Federal means-tested public benefit in a quarter and earning enough in that quarter to receive credit for 4 quarters of coverage. The commenter opined that the alien could then receive a Federal means-tested public benefit in the other quarters of the year and that such receipt would not disqualify the quarters earned in a period of nonreceipt of a Federal means-tested public benefit. The commenter correctly points out that SSA allows credit for a maximum of four quarters of coverage for earnings received in a period of less than 1 year. SSA bases credit for quarters on the individual's earnings over the course of the year, not on the amount earned in each calendar quarter. Since this point is made clear in SSA's guidance we saw no need to include the issue in the proposed regulations. The Department is not adopting the commenter's suggestion, because it is at odds with the procedures SSA uses to determine qualifying quarters for SSI. Even if a worker earns enough in one quarter to qualify for 4 quarters of coverage, SSA does not credit a quarter until it actually begins. Credit for the quarter accrues on the first day of the quarter. Thus, it is possible to correlate qualifying quarters of coverage with quarters in which the alien or the alien's parents or spouse received a Federal means-tested public benefit. The final rule does provide more guidance for determining qualifying quarters. We are adding language to the final rule specifying that State agencies must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. If an alien earns 4 quarters coverage in a calendar year and receives Federal means-tested public benefits in 2 quarters of that year, the State agency must disqualify 2 of the quarters of coverage so earned. Finally, the same commenter urged the Department to require that quarters of coverage credited from the earnings of a spouse continue even if the couple subsequently divorces. The commenter argued that current FNS policy allows State agencies the option of crediting such quarters of coverage to a divorced spouse even after the former spouse is recertified and that a uniform national policy would be preferable. The commenter's statement is not an accurate portrayal of FNS policy. The FNS guidance on this matter allows States to use discretion in this matter either by immediately discrediting the quarters of a divorced spouse or by waiting until the household's next recertification. However, once the State agency redetermines eligibility, the alien loses the quarters of the former spouse. In view of the clear language of the statute, the Department is not adopting the commenter's suggestion. However, to be consistent with SSI policy, the final rule provides that once the State agency determines eligibility

based on the quarters of coverage of the spouse, such eligibility continues until the household's next recertification. Also, for consistency with SSI policy, the final rule stipulates that if the alien earns the 40th quarter of coverage prior to applying for food stamps in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total. Finally, the final rule codifies a DOJ legal determination that qualifying quarters of work not covered by Title II of the Social Security Act may be credited in determining the eligibility of an immigrant. According to DOJ's determination, Congress intended to adopt the mechanism used by SSA for calculating the amount of wages necessary to obtain a quarter of coverage, but not the limitations on the types of employment in which the wages may be earned.

Which Qualified Aliens are Subject to a 7-Year Eligibility Limit?

Section 402(a)(2)(A) of PRWORA provided that refugees admitted under section 207 of the INA, asylees admitted under section 208 of the INA, and aliens whose deportation or removal has been withheld under sections 243(h) or 241(b)(3) of the INA would be eligible for 5 years. Refugees would be eligible for 5 years from the date of entry into the country, asylees would be eligible for 5 years from the date asylum was granted, and deportees would be eligible for 5 years from the date deportation or removal was withheld. Section 5302 of the Balanced Budget Act of 1997 reorganized section 402(a)(2)(A) to separate the requirements for eligibility for SSI and food stamps and to provide in paragraph (A)(ii)(IV) that an alien granted status as a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, would be eligible for 5 years from the date granted that status. Section 5306 of the Balanced Budget Act further amended section 402(a)(2)(A) of PRWORA to add a new paragraph (A)(ii)(V) which provided that certain Amerasians would be eligible for 5 years from date admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations Appropriations Act, incorporated as section 101(e) of Public Law 100–202 as amended by Public Law 100–461. This legislation provided for certain Amerasians in Vietnam, with their close family members, to be admitted to the U.S. as immigrants through the Orderly Departure Program beginning on March 20, 1988. These Amerasians will be admitted for permanent residence at the point of entry.

The AREERA further amended section 402 of PRWORA. Section 503 of AREERA amended section 402(a)(2)(A) of PRWORA to extend the time period that refugees, asylees, deportees, Cubans, Haitians, and Amerasians can be eligible from 5 years to 7 years. Section 402(a)(1) of PRWORA makes all other types of qualified aliens (with the exceptions of lawful permanent residents with 40 qualifying quarters of work and alien members of the armed forces, alien veterans, and certain members of such an alien's family) ineligible for food stamps for as long as they maintain their current alien status; all other non-qualified aliens are ineligible under section 401(a) of PRWORA. Section 504 of AREERA amended section 402(a)(2)(F) of PRWORA to provide that aliens who are receiving benefits or assistance for blindness or disability as defined in section 3 (r) of the Food Stamp Act may be eligible for food stamps provided that they were lawfully residing in the United States on August 22, 1996. Section 506 of AREERA added a new section (I) to section 402(a)(2) of PRWORA to make aliens eligible if they were lawfully residing in the United States on August 22, 1996 and they were 65 years of age or older on that date. Section 507 of AREERA added a new section (J) to section 402(a)(2) of PRWORA to make aliens eligible if they were lawfully residing in the United States on August 22, 1996 and are currently under 18 years of age. We proposed to include the alien eligibility criteria added by AREERA in section 7 CFR 273.4(a).

One commenter thought that the provision relating to aliens who were legally residing in the United States on August 22, 1996, and were age 65 or older on that date could be clarified by specifying that the provision applied to aliens born on or before August 22, 1931. The Department has adopted this suggestion.

In order to formalize our existing guidance on the applicability of the disparate eligibility requirements enumerated in section 402 and section 403 of PRWORA, we proposed to apply the requirements of PRWORA section 402 uniformly to the Food Stamp Program. We received no comments on this determination. Because we are currently reviewing our existing guidance, we decided not to address the applicability of PRWORA section 403 to the Program in this final rule. We will issue revised guidance if necessary as a result of our review.

Under section 402(a)(2)(C) of PRWORA, an alien lawfully residing in any State who is a veteran honorably discharged for reasons other than alien status or who is on active duty in the Armed Forces of the United States for reasons other than training or the spouse or unmarried dependent child of a veteran or person on active duty is eligible to participate. Section 5563 of the Balanced Budget Act of 1997 amended the provision regarding military-related eligibility to: (1) apply the minimum active duty service requirement (24 months or the period for which the person was called to active duty); (2) expand the definition of "veteran" to include military personnel who die while on active duty and certain aliens who served in the Philippine Commonwealth Army during World War II or served as Philippine Scouts after World War II; and (3) add eligibility for the unremarried surviving spouse of a deceased veteran, provided the couple was married for at least one year or for any period if a child was born of the marriage or was born to the veteran and the spouse before the marriage and the spouse has not remarried.

We proposed to define an unmarried dependent child for purposes of section 402(a)(2)(C) regarding persons with a military connection to include a legally adopted or biological dependent child of an honorably discharged veteran or active duty member of the Armed Forces if the child is under the age of 18 or a full-time student under the age of 22. It would also include a child of a deceased veteran provided the child was dependent upon the veteran at the time of the veteran's death. In addition, we proposed to include a disabled child age 18 or older if the child was disabled and dependent on the active duty member or veteran prior to the child's 18th birthday. This definition is consistent with that developed for the Supplemental Security Income (SSI) program. We also proposed to apply this definition of an unmarried dependent child to section 402(a)(2)(K) regarding unmarried dependent children of Hmong and Highland Laotians. Section 431(a) of PRWORA provides that except as otherwise provided, the terms used have the same meaning given such terms in section 101(a) of the INA. However, there is no definition of a child in section 101(a), and there are two definitions in 101(b), one for immigration purposes and one for nationality purposes. Because of the ambiguity of the law and the fact that both of the INS definitions are much more complicated than the definition used for SSI purposes, we proposed to use the SSI definition of dependent child. We also considered using

dependent as used for other food stamp purposes such as the work registration exemption, but believe they are too restrictive for this purpose.

We proposed to include the eligibility provision for individuals with a military connection in new paragraph (a)(5)(ii)(G).

Under current regulations at 7 CFR 273.4(a)(8) and (a)(9), aged, blind, or disabled aliens admitted for temporary or permanent residence under section 245A(b)(1) of the INA and special agricultural workers admitted for temporary residence under section 210(a) of the INA are eligible to participate. The PRWORA does not address the status of aliens admitted for temporary residence. Therefore, these aliens are eligible only if they meet the requirements of section 402 of PRWORA described above, and we proposed to remove paragraphs (a)(8) and (a)(9).

We also proposed to remove 7 CFR 273.4(b), (c) and (d) as unnecessary and redesignate paragraph (e) as paragraph (b). Current paragraph (b) is a partial list of ineligible aliens. Current paragraph (c) refers to the provisions in 7 CFR 273.11(c)(2) for treatment of the income and resources of an ineligible alien and is unnecessary. Current paragraph (d) explains how to treat the income and resources of an alien while awaiting a determination of an individual's eligible alien status. Provisions governing the treatment of individuals while awaiting verification of eligible alien status are located at 7 CFR 273.2(f)(1)(ii), and it is not necessary to repeat the procedure at 7 CFR 273.4. We would retain in redesignated paragraph 7 CFR 273.4(b) the requirement in current 7 CFR 273.4(e) to report illegal aliens to INS.

We proposed a conforming amendment to 7 CFR 273.1(b)(2)(ii), concerning ineligible household members. We proposed to change the reference in 7 CFR 273.1(b)(2)(ii) from ''§ 273.4(a)'' to ''§ 273.4'' because both paragraphs 273.4(a) and (b) describe eligibility requirements for aliens.

What Does the Term ''Lawfully Residing'' Mean?

Several advocacy groups suggested that we add a definition of the term ''lawfully residing'' in the United States to the final rule. Such groups further suggested that the DOJ definition of ''lawfully present'' for purposes of receiving benefits under Title II of the Social Security Act could be used for food stamp purposes. The DOJ definition gives lawfully present status to the following aliens:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104–193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the INA for less than 1 year, except:

- Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA; and
- Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(a)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

- Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA;
- Aliens currently under Temporary Protected Status (TPS) pursuant to section 244A of the INA;
- Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603, as amended;
- Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;
- Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
- Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);
- Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the INA and applicants for withholding of deportation under section 243(h) of the INA who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

We are adopting this suggestion to clarify eligibility requirements for Hmong and Highland Laotian tribal members, and certain individuals whose eligibility depends on their lawful residence in the United States on August 22, 1996. While we are adopting DOJ's definition by reference, we are not repeating the definition in the final rule. We now believe a definition of the term ''lawfully residing in the United States'' is necessary for two reasons. First, although Hmong and Highland Laotian tribal members do not have to be qualified aliens to be eligible for food stamps, they still must have a lawful immigration status. The definition set forth at 8 CFR 103.12(a) will provide guidance to State agencies in making this determination. Second, aliens who must qualify under the AREERA amendments to PRWORA to be eligible for food stamps must meet two separate tests: (1) the alien had to be lawfully residing in the United States on August 22, 1996; and (2) the alien must have current status as a qualified alien (with the above-noted exception for Hmong and Highland Laotians). The final rule clarifies that an alien may have had an immigration status on August 22, 1996, that would not *currently* qualify the alien for participation. As long as the alien met the definition of ''lawfully residing in the United States'' *then*, the alien may be eligible for food stamps, if *now* he or she has adjusted to a qualifying immigration status. For example, a 70 year old alien had an application for asylum pending as of August 22, 1996. Subsequently, the INS grants the asylum request. The alien is eligible for 7 years from the date of the granting of asylum. On the other hand, an individual who was present in the United States on August 22, 1996, but not lawfully residing in the United States, may not use this provision to access food stamp benefits. This is true even if he or she later achieves a qualifying immigration status. For example, an undocumented then-66 year old alien was present in the United States on August 22, 1996. The alien subsequently leaves the county and returns as a LPR. Unless the alien has earned or can get credit for 40 quarters of Social Security coverage, the alien is not eligible for food stamps.

May any Non-Qualified Aliens Participate in the Program?

Section 505 of AREERA amended section 402(a)(2)(G) of PRWORA to provide that aliens who are American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply or who are members of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act may be eligible for food stamps. Section 508 of AREERA added a new section (K) to section 402(a)(2) of PRWORA to make any individual eligible who is lawfully residing in the United States and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964–May 7,

1975). Section 508 further extends food stamp eligibility to the spouse, or unremarried surviving spouse, and unmarried dependent children of such Hmong or Highland Laotian. Section 509 of AREERA amended section 403(b) of PRWORA to provide that American Indians made eligible by section 505 and Hmong and Highland Laotians and their families made eligible by section 508 do not have to be qualified aliens to be eligible for food stamps. We proposed that members of these groups are the only aliens who can be eligible for food stamps without being a qualified alien as defined in section 431 of PRWORA.

There were several comments relating to the eligibility of Hmong and Highland Laotians. One commenter thought the Department should simply confer eligibility on any person who was a member of a Hmong or Highland Laotian tribe on or prior to May 7, 1975. We are not adopting this suggestion. The Department has no authority to change the clear requirement of the statute. One State agency suggested that the Department include step-children in the definition of ''dependent child'' for purposes of determining eligible status under section 508. As stated previously, the Department is adopting the definition as proposed for the sake of consistency with SSI.

How Must State Agencies Comply With the Requirement To Report Illegal Aliens?

The Department proposed no changes in, nor received any comments on, the requirement in renumbered 7 CFR 273.4(b)(1) to report illegal aliens. However, we are taking this opportunity to recognize the September 28, 2000 (65 FR 58301) publication of the Interagency Notice providing guidance for compliance with PRWORA section 404. PRWORA section 404 requires certain Federal and State entities at least four times annually, to notify the INS of any alien the entity ''knows'' is not lawfully present in the U.S. The Interagency Notice specifies that a government entity ''knows'' that an alien is present illegally only when the entity's finding or conclusion of unlawful presence is made as part of a formal determination subject to administrative review and is supported by a determination of the INS or the Executive Office of Immigration Review, such a Final Order of Deportation. PRWORA section 404 does not apply to the Food Stamp Program; however, for purposes of complying with the reporting requirement in 7 CFR 273.4(b)(1), the Department considers a State agency to be compliant if it limits its reporting of illegal aliens for food stamp purposes to the standard of ''knowing'' established in the above-cited Interagency Notice. We believe that ''knowing'' that an alien is present illegally as defined in the Interagency Notice is consistent with the State agency ''determining'' that an alien is present illegally as required under 7 CFR 273.4(b)(1), as interpreted to conform with the September 28, 2000 (65 FR 58301) Interagency Notice providing guidance for compliance with PRWORA Sec. 404.

How Must State Agencies Treat the Deemed Income and Resources of Sponsored Aliens?

We proposed to move the sponsored alien provisions from 7 CFR 273.11(j) to new paragraph 7 CFR 273.4(c) and to renumber 7 CFR 273.11(k) as 7 CFR 273.11(j). This will consolidate most of the alien provisions.

Current rules at 7 CFR 273.11(j) establish special procedures for determining the income and resources of sponsored aliens. Sponsored aliens are individuals lawfully admitted to the United States for permanent residence. A sponsor is a person who executed an affidavit of support on behalf of an alien as one of the conditions required for the alien's entry into the United States. The current rules require that a portion of the gross income and resources of the sponsor and the sponsor's spouse (if living with the sponsor) be deemed to the sponsored alien for a period of 3 years from the date of the sponsored alien's entry into the country as a lawfully admitted permanent resident alien. Under section 5(i) of the Food Stamp Act, the income of the sponsor and the sponsor's spouse (if living with the sponsor) is the total annual income reduced by the income eligibility standard for a household equal in size to the sponsor's household, and deeming continues for only 3 years. The Act also requires the subtraction of $1,500 from the resources of the sponsor and the sponsor's spouse prior to deeming the remainder to the alien.

Section 421 of PRWORA, as modified by the OCAA and the Balanced Budget Act, contains several provisions which revise the current requirements. First, section 421(a)(1) provides that, notwithstanding any other provision of law, the income and resources of the alien must be deemed to include the income and resources of any person who executed an affidavit of support pursuant to section 423 of PRWORA which is a legally binding contract. Section 421(a)(2) provides that the income and resources of the spouse (if any) of the person executing the affidavit are to be deemed to the alien. Section 421(b) provides that the deeming must continue until the alien becomes a citizen or has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters. Any quarter creditable for a period beginning after December 31, 1996, cannot be credited if the alien received any Federal means-tested public benefit during the quarter. Section 403 includes a list of types of assistance exempt from the prohibition against allowing a quarter of work credit for a quarter in which an alien received any means-tested public benefit. This list of exempt assistance is addressed in the discussion of alien eligibility requirements above.

Section 552 of OCAA amends section 421 of PRWORA to provide two exceptions to the requirement that the income and resources of the sponsor(s) and sponsor's spouse be deemed to the sponsored alien. For indigent aliens deeming is limited to the amount actually provided by the sponsor to the alien for a period beginning on the date of such determination and ending 12 months after such date. The Department proposed that the State agency establish criteria for determining when an alien is unable to obtain food and shelter considering all income and assistance provided by individuals and thus should be considered indigent. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved. Deeming is eliminated for 12 months for battered alien spouses and children and parents of battered children if the benefit provider determines that the battering is substantially connected to the need for benefits. Section 5571 of the Balanced Budget Act of 1997 includes the alien child of a battered parent in this provision. Deeming of the batterer's income and resources is eliminated after 12 months if the battery is: (1) recognized by a court or the INS; and (2) has a substantial connection to the need for benefits. These provisions do not apply if the battered alien lives with the batterer.

Section 423, as amended by section 551(a) of the OCAA, provides that the sponsored alien provisions in PRWORA apply to aliens who are sponsored under a new legally binding affidavit of support. It also requires that if a sponsored alien has received any benefits under a means-tested public benefit program, the State agency must request that the sponsor provide reimbursement in the amount of such assistance. If, within 45 days after the

request for reimbursement, the sponsor has not indicated a willingness to commence payment, the State agency may bring legal action against the sponsor pursuant to the affidavit of support. The DOJ published an interim rule with request for comments on the new affidavits of support and reimbursement provisions in the **Federal Register** on October 20, 1997 (62 FR 54346). The rule is effective on December 19, 1997, and the new affidavits of support should be used for all aliens who become sponsored after that date.

The Department proposed to revise 7 CFR 273.11(j) to incorporate provisions of PRWORA, OCAA, and the Balanced Budget Act of 1997 and to streamline the section by increasing State agency flexibility and removing redundant requirements. Our proposals generated many adverse comments. Generally, State agencies and advocacy groups opposed the proposals to delete the provisions of the current regulation, which tend to reduce the amount of the sponsor's income and resources which could be considered available to the sponsored alien. Many commenters urged us to restore the deductions from the sponsor's income and resources which are included in the current regulations. Commenters worried that the proposals, if implemented, would result in the ineligibility of other household members, particularly U.S. citizen children of sponsored aliens, ostensibly an unintended result of the deeming provisions. They felt the proposed rule was antithetical to the Department's efforts to increase participation of low-income households containing eligible aliens and U.S. citizens. Commenters also cited the inequity of counting the deemed income of the sponsored alien as being available to individuals for whom the sponsor has executed no affidavit of support.

The Department carefully reviewed the concerns the commenters raised on this difficult issue. We struggled to find a sensible way to comply with new PRWORA deeming provisions, while taking into account the existing requirements of section 5(i) of the Act. During formulation of the final rule, we had extensive discussions of this issue with other agencies within the Executive Branch. Based on these conversations and comments we received, we determined that the provisions of PRWORA which require deeming of a sponsor's income and resources do not conflict with the provisions of the Act specifying how to calculate the amount of money to deem from a sponsor. Therefore, those Food Stamp Act provisions remain in effect.

We concluded that the best reading of the law, in consideration of the comments received and the determination noted above, would be to modify the proposed rule as follows. Outlined below are the proposals and changes we made in the final rule:

1. We proposed in new paragraph (c)(1) to add a reference to section 213A of the INA, which contains requirements for the affidavit of support. We incorporated the definition of ''sponsor'' in the definition of ''sponsored alien'' and removed the definitions of ''Date of entry'' and ''Date of admission'' because those terms are no longer relevant to the new deeming requirements

Several commenters questioned the ability of the Department to require deeming of income from spouses who had not executed an affidavit of support. One State agency thought that the regulation was unclear on the point of the obligation of a spouse to support the sponsored alien. The State agency asked for guidance in situations where the affidavit of support predates the marriage, or the spouse signs an affidavit of support and subsequently, the couple divorce.

The Department agrees that the obligation of spouses to support the sponsored alien needs clarification. There seems to be an inconsistency between the provision in PRWORA requiring the deeming of the income of an individual who has executed an affidavit of support on behalf of an immigrant and the provision requiring the deeming of income of a spouse without specifying whether this individual has also executed an affidavit of support (either Form I–864 or Form I–864A). We look to the INS regulations at 8 CFR 213a to resolve this apparent inconsistency. Through its regulation, INS has made it clear that only individuals who execute legally binding contracts for support are responsible for the support of the sponsored alien. Further, only those individuals who have signed either Form I–864 or Form I–864A are responsible for reimbursing the value the value of Federal means-tested public benefits paid to an eligible sponsored alien. The final rule specifies that only those persons who have executed affidavits of support are sponsors.

One State agency observed that sponsored status is not indicated on the ''green card'' or on ASVI; therefore, staff are unable to identify sponsored aliens, absent specific Interim Guidance from FNS. The State agency correctly observed that sponsored status is not indicated on the I–551 or through ASVI. However, as there is no list of categories of legal permanent residents who would be excluded from obtaining a sponsor, the Department expected that eligibility workers would need to explore sponsored alien status with all immigrants during the application and verification process. In view of the State agency's concern, FNS will explore the need for and possibly issue additional guidance on this issue.

2. We proposed to revise the introductory text of current paragraph (j)(2) to incorporate our original reading of the statute that PRWORA requires that all of the sponsor's income and resources be counted in determining the eligibility and benefits of the sponsored alien, and that deeming lasts until the alien becomes a citizen or can be credited with 40 qualifying quarters of coverage. The income and resources of sponsored aliens, whether they are eligible or ineligible aliens, would include the income and resources of the sponsor and would be counted in determining the eligibility and benefits of the rest of the household, in accordance with 7 CFR 273.11(c). We proposed to remove the provision in current paragraph (j)(2)(v) requiring the counting of the income and resources of both the sponsor and sponsor's spouse in determining eligibility. We proposed to remove the provisions of current regulations in paragraph (j)(2)(i)(A) allowing a 20 percent deduction from the sponsor's earned income and paragraph (j)(2)(i)(B) allowing a deduction for an amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor's household. We proposed also to remove the provision allowing use of the income amount reported for AFDC purposes in current paragraph (j)(2)(ii). We proposed to remove the provision of paragraph (j)(2)(iv) which limits the deemed amount of the sponsors' resources to those in excess of $1,500 to conform with our reading of PRWORA section 421 regarding deeming of sponsor resources. With the removal of these provisions, we proposed to retain and designated as paragraphs (c)(2)(i) and (c)(2)(ii), respectively current paragraphs (j)(2)(iii) regarding money the sponsor pays to the alien and (j)(2)(iv) requiring the division of the income and resources of the sponsor among the number of aliens sponsored by that sponsor. We proposed to delete current paragraph (j)(2)(vii) which provides specific procedures for handling changes in sponsors in order to provide State agency flexibility. We believed that the State agency is in the best position to make these decisions.

Requirements contained elsewhere in current regulations for reporting and acting on changes that affect a household's eligibility or benefit levels are already comprehensive and we believed there was no additional Federal interest to be protected by providing specific procedures for this particular kind of change.

In the final rule, the Department is making significant revisions to the deeming provisions, and is limiting their application to situations where the sponsored alien is an *eligible* alien. We felt that PRWORA gave the Department discretion to determine whether section 421 requires that the amount of income and assets of a sponsor of an *ineligible* alien be counted in the food stamp case of a household which includes both eligible and ineligible members. Accordingly, the final rule excludes the deemed income and resources of an ineligible sponsored alien.

However, we could find no such latitude in the case of an *eligible* sponsored alien. In as much as the eligible alien is a household member, we see no way to exclude the income and resources, including the deemed income and resources of the alien's sponsor, from the calculation of household eligibility and benefit amount, if the sponsored alien is not indigent as discussed below. In the final rule, we are restoring some significant provisions of the current regulations relating to the computation of the sponsor's income and assets. These are the provisions allowing a 20 percent deduction from the sponsor's earned income and allowing a deduction for an amount equal to the monthly gross income eligibility limit for a household equal in size to the sponsor's household, and the provision which limits the deemed amount of the sponsors' resources to those in excess of $1,500. The final rule also provides that the normal food stamp definitions of income and resources apply to the determination of sponsor income and resources. To the extent that another assistance program the State agency administers collects gross income information on sponsors from sponsored aliens, the State agency may use this information in the sponsored alien's food stamp case. Several commenters suggested that the Department raise the resource exclusion to $2,000 to conform to the resource limit for households without an elderly member as set forth in section 5(g)(1) of the Act. We are unable to adopt this suggestion, as Congress did not raise the threshold amount for excluding the resources of a sponsor when it raised the general resource limits for households without an elderly member.

3. Current paragraph (j)(3) exempts the following aliens from the deeming provisions: aliens whose sponsor is participating in the Program in the same household as the sponsored alien or in a separate household, aliens who are sponsored by a group as opposed to an individual, and aliens not required to have sponsors. We proposed to delete the exemption for aliens whose sponsor is participating in the Food Stamp Program in a separate household from the sponsored alien. We proposed to retain the exemption for sponsored aliens who are included in the same household as the sponsor so that the State agency does not double count sponsor's income and resources. We proposed to add exemptions for indigent aliens and certain battered aliens and the child of a battered alien as provided in the OCAA and the Balanced Budget Act of 1997 and to require reporting each indigence determination to the Attorney General.

Many commenters opposed the proposal to delete the exemption from deeming for sponsored aliens whose sponsor participates in the Program in a separate household. The Department is not adopting this suggestion. As stated previously, section 423 of PRWORA provides that the deeming provisions apply to aliens who are sponsored under a new legally binding affidavit of support. The provision does not apply to aliens who are not required to have an affidavit of support filed on their behalf, nor to those who have an organization, as opposed to a ''person,'' as their sponsor. The Department's regulations excuse from the deeming provisions sponsored aliens who participate in the Program in the same food stamp household as their sponsor. In this instance, the food stamp household concept already requires consideration of the income and assets of all eligible household members. Beyond the just-noted exceptions to deeming, the Department sees no legal basis for excusing an eligible sponsored alien from the deeming requirements, simply because the sponsor is receiving food stamps. Receipt of food stamps does not render invalid the affidavit of support the sponsor has signed. However, the Department has restored the provisions of the current regulations with respect to the amount of deemed income that State agencies may count in the food stamp case of an eligible sponsored alien. Accordingly, little or no income or resources of a sponsor who is participating in the Program could be deemed in the food stamp case of a eligible sponsored alien.

Some State agencies and many advocacy groups suggested that we establish national standards for State agency use in making determinations of ''indigence'' with respect to excusing sponsored aliens from the deeming provisions. After consultation with the INS, the Department has determined that it does have authority to mandate such standards and the final rule adopts the suggestion. Section 423 of PRWORA requires the State agency to determine that a sponsored alien would, in the absence of the assistance provided by the State agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved. The final rule emphasizes the indigence exception by more closely defining the term ''inability to obtain food and shelter without assistance.'' Under the final rule, a sponsored alien is indigent if the sum of all the sponsored alien's household's income and any assistance the sponsor or others provide (cash or in-kind) is less than or equal to 130 percent of the poverty income guideline. The Department feels that the 130 percent of poverty income guideline is a well-recognized benchmark for determining if a household is in need of food stamps and other government assistance. However, to comply with the statute, and unlike a normal determination of income for food stamp eligibility purposes, the indigence determination includes the value of in-kind assistance the sponsor and others provide. The State agency would determine the amount of income and other assistance provided in the month of application. Each indigence determination is good for 12 months and is renewable for additional 12-month periods. If the sponsored alien is indigent, then the normal food stamp budgeting process would begin. The State agency would count in the food stamp budget whatever *actual* cash contributions the sponsor and others make.

The Department believes the procedure for determining indigence would work as follows:

A. The eligibility worker (EW) would inquire about sponsored alien status if an alien is a LPR.

B. If the LPR is an *eligible* sponsored alien, then the EW would make an indigence determination.

C. If the alien is indigent, then the EW processes the case as normal, counting only the actual amount of cash support

from the sponsor. If the alien is not indigent, then the EW would require the sponsored alien to collect information on the total amount of the sponsor's income and assets and deem appropriate amounts to establish eligibility and benefit amount.

4. We proposed to retain the provisions of current paragraph (j)(4) concerning the sponsored alien's responsibility for obtaining the cooperation of the sponsor and providing information about the sponsor to the State agency.

Some commenters questioned how a sponsored alien could garner information from a sponsor with whom the alien's relationship had soured, particularly if the sponsor were battering the alien. We are leaving this language unchanged in the final rule; however, the Department has restored the requirement that State agencies assist aliens in obtaining information from recalcitrant sponsors.

5. We proposed to delete the provisions of current paragraph (j)(5) which lists specific responsibilities of the State agency for processing cases involving households with sponsored aliens. We believed that these requirements are unnecessary because the State agency is aware of the information about the sponsor that must be obtained and there is no need to provide detailed regulatory requirements. We received no adverse comments on this provision, so we are leaving the proposed language unchanged in the final rule.

We proposed to renumber current paragraph (j)(6) concerning procedures for acting on a household's application pending receipt of verification about the sponsor's income and resources as paragraph (j)(5). We proposed to delete the last sentence of current paragraph (j)(6) in the new paragraph (j)(5). That sentence requires State agencies to assist aliens in obtaining verification in accordance with the provisions of current § 273.2(f)(5). In accordance with amendments made by PRWORA discussed above, we proposed to remove the requirement to assist households in obtaining verification from the regulations. Inasmuch as the Department is retaining current § 273.2(f)(5), we are restoring this reference to the final rule.

6. We proposed to remove current paragraph (j)(7) requiring the Department to enter into a Memorandum of Agreement between the Department and other Federal agencies as this is a Federal responsibility, and it is addressed by DOJ's interim rule published on October 20, 1997, (62 FR 54346). We received no adverse comments on this provision, so we are leaving the proposed language unchanged in the final rule.

7. We proposed to remove the provisions of current paragraph (j)(8) concerning overissuances which may result from the use of incorrect sponsor information. A State agency asked us to clarify the status of recipient claims filed against sponsors pursuant to 7 CFR 273.11(c)(8)(iii). The State agency worried that any such claims might become uncollectible once the new rule is effective.

In regard to the State agency's question on the status of overissuance claims against sponsors, current § 273.11(j)(8)(iii) and the requirements of PRWORA section 423(e), address completely separate issues. The USDA regulation addresses recipient claims situations where a sponsor is at fault for providing inaccurate information to the State agency for the purpose of establishing the eligibility and benefit amount of the sponsored alien's household. PRWORA section 423(e) addresses situations where the sponsor has executed the specified affidavit of support and owes the benefit-providing agency the value of any Federal means-tested public benefits provided to the sponsored alien. (This issue is discussed extensively in the following paragraph.) Accordingly, any existing claims against sponsors filed under 7 CFR 273.11(j)(8)(iii) remain valid claims. After the State agency implements the final rule, any recipient claims arising from overissuances to a household which includes a sponsored alien will be the sole responsibility of that household.

8. The NPRM did not establish any procedures for sponsor reimbursement of means-tested public benefits provided to sponsored aliens, as stipulated under PRWORA section 423(e). Instead, in the proposed rule's preamble, the Department directed readers to refer to an Interim DOJ rule published on October 20, 1999 (62 FR 54346). There was much adverse commentary from State agencies and advocacy groups on the lack of policy direction on this issue.

Advocacy groups urged the Department to be more specific as to the calculation of benefits for which a State agency could bill a sponsor when the eligible sponsored alien receives food stamp benefits. Advocacy groups also urged us to prevent State agencies from billing sponsors until the Department and other Federal agencies develop uniform collection procedures through the regulatory process. Several State agencies and advocacy groups urged the Department to exempt certain sponsors from the requirement to reimburse the Federal government for the value of food stamps issued to eligible sponsored aliens.

During the development of the final rule, it became apparent to us that the issue of billing sponsors for the value of means-tested public benefits was extremely complex and could not be resolved without coordination and consultation with other Federal agencies. After consultation with appropriate departments of the Executive Branch, we have decided not to regulate this issue until the Department has completed a thorough policy development process in coordination with other Federal agencies, with one exception discussed below.

The final rule addresses the issue of State agencies billing sponsors who themselves participate in the Program, either in the same household or in a separate household. Commenters have raised an issue which is not easily resolved. Under the OCCA amendment to PRWORA, an intending sponsor must demonstrate the means to maintain an annual income of at least 125 per cent of the Federal poverty income guideline for the sponsor's household size, including any dependents and the sponsored alien(s). Also, a sponsor may qualify financially based on the anticipated contribution of the sponsored alien to the sponsor's household's income. The annual income requirement is no less than 100 percent of the Federal poverty income guideline if the sponsor is an active duty member of the armed forces and the intending immigrant is the sponsor's wife or child. Further, the obligation of the sponsor to support a sponsored alien ceases only when the alien naturalizes or when the alien works or can get credit for 40 quarters of social security coverage. However, the framers of the OCCA amendment to PRWORA apparently did not contemplate that individuals and their families who meet the minimum financial requirements for sponsorship may yet qualify for food stamps, as well as other Federal means-tested public benefits. The general gross income guideline for the Program is 130 per cent of the Federal poverty income guideline. The gross income test does not apply to households which include a member age 60 or older; rather, such households must pass a net income test of 100 percent of the Federal poverty income guideline, after deducting allowable expenses from gross income. The Department does not believe that Congress intended that in order to comply with the law State agencies must bill sponsors for the value of food

stamp benefits paid to the eligible sponsored alien, notwithstanding the fact that the sponsors themselves are eligible for the Program or that the eligible sponsored alien is a member of the sponsor's food stamp household. After consultation with DOJ, the Department believes it has the authority to forestall such an incongruous result. Accordingly, the final rule exempts sponsors who are themselves participating in the Program from receiving bills from State agencies for the value of food stamp benefits provided to an alien for whom they have signed an affidavit of support.

9. Finally, based on comments from State agencies and advocacy groups, the final rule deletes the requirement in the proposed rule that State agencies may prorate the income and resources of the sponsor among multiple sponsored aliens only if the sponsored aliens apply for or participate in the Program. However, the final rule retains the requirement that the State agency must prorate the deemed income among the various sponsored aliens regardless of whether the sponsor participates in the program (as set forth in § 273.4(c)(2)(v)).

7 CFR 273.8

Inaccessible Resources—Vehicles—7 CFR 273.8(e) and (f)

We proposed to amend section 273.8(e)(18) to allow vehicles to be treated as inaccessible resources. We also proposed to amend section 273.8(h)(1) to add a provision for excluding the value of a vehicle that the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The rule would have excluded any vehicle which was likely to produce a return of less than $1,000 or $1,500, depending on the household's resource limit. We also solicited public comment on the ways in which we could simplify the method for evaluating vehicles. Currently, the rules are fairly complex. Some vehicles are exempted from consideration as a resource. Others which are nonexempt, but are the household's only transportation or are used for employment or training are subject only to the fair market test. A third category of household vehicles is subject to a dual test, which counts as a resource the higher of the fair market value in excess of $4,650 or the equity value. (Section 810 of PRWORA amended section (5)(g) of the Act to set the fair market value exclusion limit at $4,650, effective October 1, 1996. See the final rule ''Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996'' published in the **Federal Register** on October 30, 2000 (65 FR 64581) for further information.) We advised commenters that the fair market value test is established by statute, while the equity test is subject to Departmental discretion.

The proposal to allow vehicles to be considered under the inaccessible resources provision received widespread support. Many commenters agreed that the rule change would help working households achieve or maintain self-sufficiency. Several commenters suggested raising the threshold amount for determining inaccessibility to higher amounts than we proposed. Commenters pointed out that the food stamp fair market value limit had simply not kept pace with the value of a modest, reliable vehicle in today's economy. Commenters argued that the Department should eliminate the equity value test as this was not required by statute and its use unduly complicated the resource determination for vehicles. State agencies generally supported the rule change, but worried that estimating the proceeds of the sale of a vehicle would be complex. Moreover, they thought the ''proceeds value'' of a vehicle would be subject to constant recalculation as the household paid down its loan balance.

State agencies correctly observed that the ''proceeds value'' of an inaccessible resource would require periodic evaluation as the loan balance on the resource declines. As the Department did not propose to amend the change reporting requirements of 7 CFR 273.12(a) in connection with this rulemaking, we intend that State agencies assess the vehicle's continued inaccessibility at recertification. In its July 1999 food stamp initiative, the Department offered State agencies the opportunity to increase program access and improve accuracy rates. By use of reporting options and other available waivers, State agencies may limit the number of times eligibility workers need to reevaluate inaccessibility by assigning households the longest certification period consistent with the stability of their circumstances. Also, some State agencies worried that the way the Department structured the proposed rule, eligibility workers would have to evaluate almost every vehicle for inaccessibility before going on to the fair market value and equity tests. This was not our intent. The way we sequence issues in the regulations to meet regulatory drafting requirements is not necessarily the best way to address issues in the actual certification process. State agencies may find it more expedient and efficient to instruct eligibility workers and program computer systems to follow a different sequence, as long as they achieve the correct outcome. For example, if a household's only vehicle has a fair market value of no more than $4,650, it is not necessary to inquire further into its accessibility. In actual practice, inaccessibility might be the test of last resort, if the eligibility worker could not find any other way to exclude the vehicle from resource consideration.

We are sympathetic to commenters' concerns that the current fair market value limit is outdated. However, as the fair market value threshold is set by statute, any modification to the current policy is beyond the scope of this rulemaking.

In the final rule we are using our discretion to simplify greatly the resource determination for vehicles. First, we are establishing a uniform threshold amount of $1,500 for determining if the value of a resource is inaccessible. This action will eliminate the need to distinguish between households with a $2,000 resource limit and those with a $3,000 limit for calculating the threshold amount of a resource. Second, the Department is changing the policy for exempting the equity value of licensed vehicles. Currently, the regulations exempt from the equity test one licensed vehicle per household and additionally any licensed vehicles used to go to work, training or education, or to look for work. In the final rule, we are broadening the exclusion from the equity test for licensed vehicles. The regulation exempts from the equity test one licensed vehicle per adult household member and any licensed vehicle a minor drives to work, school or training, or to look for work. These changes will simplify the resource calculation and aid more low-income families.

Under the final rule, these are the provisions for handling licensed vehicles:

(1) The rule completely excludes a vehicle from the resource test if it is necessary to produce income, used as a home, necessary to transport a disabled household member, necessary to carry fuel for heating or water for home use, or it is classified as an inaccessible resource (*i.e.,* likely to produce a return of no more than $1,500);

(2) The rule exempts from the equity test and requires evaluation for fair market value only one licensed vehicle not excluded under the previous paragraph for each adult household

member regardless of use, and any unexcluded licensed vehicle a household member under age 18 drives to work, school or training, or to look for work. The State agency would count the fair market value in excess of $4,650 for each such vehicle.

(3) For any other vehicles the household possesses, the rule requires counting of the higher of the fair market value in excess of $4,650 or the equity value.

The following examples show how the new policy would work: (1) A household is making payments on a 1994 sedan with a fair market value of $7,000. The household has no other vehicles. The eligibility worker knows that excess fair market value ($2,350) would make the household ineligible. In this instance, the eligibility worker must determine if the vehicle is inaccessible. It turns out that the household would net $500 from the vehicle, if it were sold. As the proceeds from the sale would be no more than $1,500, the eligibility worker would deem the entire value of the vehicle to be an inaccessible resource and would exclude the vehicle from consideration as a resource for eligibility purposes. (2) Alternatively, assume a household has a single vehicle which is not otherwise excludable and has a fair market value of $6,200. The eligibility worker could first evaluate the vehicle according to its excess fair market value. The countable fair market value of the vehicle as a resource would be $1,550 ($6,200–$4,650). Assuming the household did not have any other countable resources that, combined with the $1,550, would exceed the applicable resource limit for the household, the household would remain eligible for participation. In that case, the eligibility worker did not have to use the inaccessible resource provision to exclude the vehicle. (3) A household consisting of two members has three licensed vehicles. One of the vehicles is a specially equipped van used for transporting a household member who is disabled. The other two vehicles would net the household more than $1,500 each if sold. In this case, the van is totally excluded and the other two vehicles are subject only to the excess fair market value test.

Finally, in response to comments, we are adding a sentence to 7 CFR 273.8(e)(17) to make it clear that if an individual receives non-cash or in-kind services under a TANF-funded program, the State agency must determine if the individual or the household benefits from the assistance provided.

7 CFR 273.9

JTPA Payments—7 CFR 273.9(b)(1)(v)

We proposed to change the references in 7 CFR 273.9(b)(1)(v) from the Job Training Partnership Act (JTPA) to the Workforce Investment Act of 1998 (WIA) based on section 199A(c) of the WIA which states that all references in any other provision of law to a provision of the Comprehensive Employment and Training Act (CETA) or JTPA, as the case may be, shall be deemed to refer to the corresponding provision of the WIA. Since publication of the proposed rule, we have received questions about the exclusion of WIA payments. Although section 181(a)(2) of the WIA provides that allowances, earnings and payments to individuals participating in programs under said Act shall not be considered as income for purposes of determining eligibility for and the amount of benefits for any Federal program based on need, section 5(l) of the Food Stamp Act provides that notwithstanding section 181(a)(2) of the WIA, earnings to individuals participating in on-the-job training under Title I of the WIA shall be considered earned income for purposes of the Food Stamp Program, except for dependents less than 19 years of age. Accordingly, we are adopting the revision to paragraph (b)(1)(v) as proposed.

Transitional Housing Payments—7 CFR 273.9(c)(1)(i)(E) and (c)(1)(ii)(E)

Current regulations at 7 CFR 273.9(c)(1)(i) and (ii) exclude the full amount of any PA or GA grant made to a third party (vendor payment) on behalf of a household residing in transitional housing for the homeless. Section 811 of PRWORA amended section 5(k)(2)(F) of the Act to remove the exclusion for transitional housing payments.

In accordance with section 811 of PRWORA, we proposed to rescind 7 CFR 273.9(c)(1)(i)(E) and (c)(1)(ii)(E) to eliminate the exclusion for PA or GA transitional housing vendor payments. State agencies would continue to be able to exclude emergency housing assistance to migrant or seasonal farmworker households while they are in the migrant stream and emergency and special assistance that is above the normal grant. GA payments from a State or local housing authority and assistance provided under a program in a State in which no cash GA payments are provided would also be excludable. With the removal of paragraph (c)(1)(i)(E), we proposed that current paragraph (c)(1)(i)(F) become paragraph (c)(1)(i)(E). Also, with the removal of paragraph (c)(1)(ii)(E) and the removal of paragraph (c)(1)(ii)(A), as described under ''Energy Assistance'' below, we proposed that current paragraphs (c)(1)(ii)(B) through (G) would become paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(E).

We received no comments on the proposal to rescind 7 CFR 273.9(c)(1)(i)(E) and (c)(1)(ii)(E) to eliminate the exclusion for PA or GA transitional housing vendor payments and the resulting redesignations. Accordingly, we are adopting the revisions and redesignations as proposed.

Earnings of Children—7 CFR 273.9(c)(7)

Current regulations at 7 CFR 273.9(c)(7) exclude the earned income of any household member who is under age 22 and an elementary or secondary school student living with a natural, adoptive or stepparent or under the parental control of a household member other than a parent. Section 807 of PRWORA amended section 5(d)(7) of the Act (7 U.S.C. 2014(d)(7)) to exclude the income of children age 17 and under. Accordingly, we proposed to amend 7 CFR 273.9(c)(7) to exclude the earned income of any household member who is under age 18. We proposed to retain all the other provisions of 7 CFR 273.9(c)(7) regarding this exclusion which were implemented in the rule published October 17, 1996 (61 FR 54292). We received no substantive comments on this proposed change. Therefore, we are adopting it as proposed.

Currently, 7 CFR 273.10(e)(2)(i) provides that for prospective eligibility and benefit determination, the earned income of a high school or elementary school student must be counted beginning with the month following the month in which the student turns 22. Section 273.21(j)(1)(vii)(A) provides that the student's income must be counted beginning with the budget month after the month in which the student turns 22. We proposed to make conforming amendments to these sections to change the age from 22 to 18. We received no substantive comments on this proposed change. Therefore, we are adopting it as proposed.

Nonrecurring Lump-Sum Payments—7 CFR 273.9(c)(8)

In 7 CFR 273.9(c)(8) regarding nonrecurring lump-sum payments, we proposed to add a sentence to allow TANF diversion payments to be excluded under certain conditions. Current policy is that they may be excluded if no more than one payment is anticipated in any 12-month period to

meet needs that do not extend beyond a 90-day period, the payment is designed to address barriers to achieving self-sufficiency rather than provide assistance for normal living expenses, and the household did not receive a regular monthly TANF payment in the prior month or the current month. We proposed to include this policy except that we changed the 90-day period to a 4-month period to reflect that the Department of Health and Human Services uses a 4-month period as the regulatory framework for its definition of short-term. (See 64 FR 17759, April 12, 1999.)

We received comments from one State association, four State agencies, and many advocacy groups. The commenters supported including the exclusion of TANF diversion payments; the State association and two State agencies suggested expanding the exclusion to cover all additional or all TANF diversion payments. The advocacy groups suggested that the definition be expanded to include any TANF payments not recognized as assistance under TANF regulations because of the exception for non-recurrent short-term benefits and that the regulations incorporate a reference to the definition of assistance in the TANF regulations. We agree with the commenters that the exclusion for TANF diversion payments should be consistent with the TANF exception for non-recurrent short-term benefits. Accordingly, we have modified the provision to exclude TANF payments not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1).

Energy Assistance—7 CFR 273.9(c)(11)

Under current regulations at 7 CFR 273.9(c)(11), energy assistance provided under any Federal law is excluded from consideration as income. Energy assistance provided under State or local law which meets the requirements specified in the regulations is excluded from income if FNS has approved the exclusion. Section 808 of PRWORA replaced section 5(d)(11) of the Act with a new section 5(d)(11) , 7 U.S.C. 2014(d)(11), which modifies the exclusion for Federal and State agency energy assistance payments. Federal energy assistance payments are excluded under this provision, with one exception. Energy assistance provided under Title IV-A of the Social Security Act is not excluded, thereby eliminating the exclusion of any energy assistance provided as part of a State's public assistance grant. The new provision allows an exclusion for one-time payments or allowances made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device.

In accordance with PRWORA provisions, we proposed to revise 7 CFR 273.9(c)(11) in its entirety, adding exclusions in new paragraph (c)(11)(i) for any payments or allowances made for the purpose of providing energy assistance under any Federal law other than Part A of Title IV of the Social Security Act and new paragraph (c)(11)(ii) for one-time payments issued on an as-needed basis under Federal or State law for weatherization or emergency replacement or repair of heating or cooling devices. All other provisions appearing under current paragraph (c)(11) were proposed to be removed.

We received comments on this proposal from a State agency and many advocacy groups. All suggested clarification to the proposed language. The State agency believed that the word ''and'' between paragraph (i) and (ii) should be replaced by ''or'' because the ''and'' could be misconstrued to prohibit the exclusion of Title IV–A payments for weatherization or emergency repair. We agree with the commenter that the word ''or'' is clearer and accordingly have revised paragraph (i) to end with ''or''.

The advocacy groups felt that the language in paragraph (ii) did not make it clear that the exclusion of Federal energy assistance applies as long as the program under which the payments are being provided is federal, regardless of whether the agency making the payments is a federal one. Specifically, the advocacy groups were concerned that not citing Department of Housing and Urban Development (HUD) and USDA Rural Housing Service (RHS) payments could result in future policy changes which could result in these payments being counted as income. In order to alleviate any confusion we have retained reference to specific exclusion of HUD and RHS energy assistance payments. Accordingly, we are adopting the revised paragraph (c)(11)(i) and (ii), modified as discussed above.

Shelter Costs—7 CFR 273.9(d)(5), Standard Utility Allowance—7 CFR 273.9(d)(6), and Adjustment of Shelter Deduction—7 CFR 273.9(d)(9)

We propose to reorganize 7 CFR 273.9(d)(5) and (6) to include all provisions related to shelter expenses in revised 7 CFR 273.9(d)(6). Current paragraph (d)(5) sets forth the requirements for allowing a deduction from the household's income for shelter expenses, including a description of allowable shelter costs and the special provisions for homeless households. Current paragraph (d)(6) describes the procedures for establishing and using a standard utility allowance as a shelter cost deduction. We proposed to reorganize 7 CFR 273.9(d)(5) and (6) by moving the provisions of paragraph (d)(5), combining them with the provisions in paragraph (d)(6), and retitling the revised paragraph (d)(6) as ''Shelter costs.'' We also proposed to redesignate paragraph (d)(7) regarding child support as (d)(5). We received no comments on the proposed reorganization and are adopting that structure as proposed.

1. *Homeless households.* Current regulations at 7 CFR 273.9(d)(5)(i) provide that State agencies must use a standard estimate of the shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the month. State agencies may develop their own standards or use an annually adjusted standard provided by FNS, currently $143 per month. Further, under current regulations, the homeless shelter estimate is used in determining the household's excess shelter deduction. That is, if the household claimed no shelter costs exceeding the estimate, the estimate would be considered to be the household's total shelter cost and the amount of the estimate over 50 percent of the household's income would be the household's excess shelter deduction.

Section 809 of PRWORA amended section 11(e)(3) of the Act to remove the homeless shelter provision and added a new paragraph (5) to section 5(d) of the Act (7 U.S.C. 2014(d)(5)) to provide that State agencies may develop an optional standard homeless shelter allowance not to exceed $143 per month. The new paragraph provides that the State agency may use the allowance in determining eligibility and allotments for homeless households and that the State agency may make a household with extremely low shelter costs ineligible for the allowance.

We proposed to revise current 7 CFR 273.9(d)(5)(i) (redesignated as paragraph (d)(6)(i)) to add an optional homeless shelter deduction from net income. Households claiming the homeless shelter deduction would be entitled to no other shelter deduction. They could, however, be entitled to a deduction for excess shelter expenses instead of the homeless shelter deduction if they verified actual costs. We received two comments from State agencies on this proposal. One State agency supported it; the other State agency opposed the

provision. That State agency believed the Department was interpreting the law too literally and that many State agencies would not adopt the optional separate homeless deduction. The Department does not agree with this commenter. As discussed in the proposed rule, the language of the law is clear that the allowance is to be used as a deduction in determining eligibility and allotments. The law does not indicate that the standard is to be used in computing the excess shelter expense, as is the case with the standard utility allowance. Accordingly, we are adopting the provision as proposed.

We also proposed a conforming amendment to 7 CFR 273.10(e)(1)(i) to add a new paragraph (G) to include the standard homeless shelter deduction. We received no comments on this conforming amendment and are adopting it as proposed.

2. *Excess shelter deduction.* Currently, 7 CFR 273.9(d)(5)(ii) provides that households are allowed a deduction for shelter costs in excess of 50 percent of the household's income after all other deductions have been subtracted. It provides that the shelter deduction cannot exceed the maximum limit established for the area, unless the household contains a member who is elderly or disabled. We proposed that the provisions of current paragraph (d)(5)(ii) concerning application of the excess shelter expense limit in households with and without an elderly or disabled member would be included in the introductory language of new 7 CFR 273.9(d)(6)(ii). We received no comments on this reorganization and are adopting it as proposed.

Current paragraph (d)(5)(ii) provides that the maximum shelter deduction limits applicable for use in the States, District of Columbia, Guam, and the Virgin Islands will be published as a notice document in the **Federal Register**. In 7 CFR 273.9(d)(9), the shelter deduction amounts and adjustments are described. Section 809 of PRWORA eliminated the annual cost of living adjustments and set the limits for the various areas by year. Therefore, we proposed to remove these provisions and provide instead that FNS will notify State agencies when the amount of the excess shelter limits change. We received no comments on the proposal to eliminate the General Notices and the description of the adjustment procedures. Therefore, we are deleting the provisions as proposed.

Current paragraphs (d)(5)(ii)(A) through (E) describe allowable shelter expenses. We proposed to amend paragraph (d)(5)(ii)(C) to expand the list of allowable utility costs to include fuel or electricity used for household purposes other than heating or cooling (including cooking) as an allowable utility expense. We received comments from one State association and four State agencies, all supporting the expansion. We also received comments from many advocacy groups suggesting that the list of allowable utility costs be revised to include a more generic description of telephone service that would include all of the various components of mandatory telephone fees. The advocacy groups pointed out that the current language ''the basic service fee for one telephone, including tax on the basic fee'' does not reflect the way charges are now billed in the competitive telephone marketing environment. We agree with the advocacy groups about the need to update the telephone service fee description. We are taking the opportunity at this time to add the costs of installing and maintaining wells and septic tank systems as an allowable utility cost. We have repeatedly over the years denied the allowability of these costs under current regulations. We have reconsidered this and have determined that these costs are analogous to costs for water and sewage. Accordingly, we are adopting the proposed revision to 7 CFR 273.9(d)(5)(ii)(C), expanding the description of basic telephone service, and adding well and septic tank system installation and maintenance to the list of allowable utility costs.

One State association and four State agencies requested that the regulations at current paragraph (d)(5)(ii)(A) be revised to include the recent policy decision to allow condo fees as shelter cost as a continuing charge for shelter. We have adopted this suggestion and are amending 7 CFR 273.9(d)(5)(ii)(A) accordingly.

The provisions of current paragraph (d)(5)(ii)(A) through (E), with the modifications outlined above, were proposed to be included in new paragraph (d)(6)(ii)(A) through (E). In addition, we proposed to remove an unnecessary sentence referring to the excess shelter deduction from 7 CFR 273.10(e)(1)(i)(E). We are adopting this redesignation and are deleting this sentence.

3. *Standard utility allowance—7 CFR 273.9(d)(6).* Under the proposed reorganization of 7 CFR 273.9(d)(6), provisions for utility standards would be contained in 7 CFR 273.9(d)(6)(iii) and would be reorganized. The reader is referred to the proposed rule for a detailed description and rationale of the proposed reorganization. Discussed below are the substantive changes we proposed concerning the standard utility allowances.

A. Developing Standards

Current regulations at 7 CFR 273.9(d)(6)(i) allow State agencies to offer a single standard utility allowance that includes the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection to households that incur a heating or cooling cost, receive energy assistance under the Low-Income Home Energy Assistance Act of 1981 (LIHEA), or receive other energy assistance but still incur out-of-pocket expenses. This allowance is hereinafter called the heating and/or cooling standard utility allowance (HCSUA). Instead of offering a single HCSUA, State agencies may offer an individual standard allowance for each utility expense, such as electricity, water, sewerage, or trash collection.

Section 890 of the PWORA, which amended section 5(d) of the Act, allows State agencies to develop one or more standards that include the cost of heating and cooling and one or more standards that do not include the cost of heating and cooling. Currently, there is no regulatory provision for a limited utility allowance (LUA) that includes utility expenses other than heating or cooling and is offered to households that do not have a heating or cooling expense but do incur the costs of other utilities. We proposed to add the authority for developing an LUA in paragraph (d)(6)(iii)(A).

We proposed in paragraph (d)(6)(iii)(A) that State agencies could establish an LUA that includes at least two utilities other than telephone. State agencies could offer individual standards to households that incur only one utility expense. We also proposed that State agencies could use different types of standards but could not allow households to use two standards that include the same expense. The State agency could vary the standards by factors such as household size, geographical area, or season. However, only utility costs identified in proposed paragraph (d)(6)(ii)(C) would be allowable expenses. States in which the cooling expense is minimal could continue to include the cooling cost in the LUA as part of the electricity component.

We received one comment from a State agency on the proposed structure of the LUA. That State agency questioned why two utilities were required for a LUA, and why, if two were required, a telephone could not be

one of the two. We continue to believe that a household needs to have a minimum of two utility costs to qualify for an LUA. However, we agree with the State agency that telephone service should be allowed as one of the two. Accordingly, we are adopting paragraph (d)(6)(iii)(A), modified to allow a telephone service as one of the two utilities. We are also adding the additional utilities included in modified paragraph (d)(6)(ii)(C) as allowable expenses.

B. Updating Standards

Current regulations at 7 CFR 273.9(d)(6)(iv) require State agencies to submit the methodology used in developing a standard to FNS for approval. These current rules also require State agencies to review and adjust the standard annually to reflect changes in the cost of utilities. We proposed to remove the requirement for annual submission of the amounts of the standards. As proposed, in new 7 CFR 273.9(d)(6)(ii), State agencies would be required to review standards periodically, make adjustments, and notify FNS if the amount changes. They could, at their option, establish thresholds for making adjustments. We also proposed to require that methodologies be submitted for approval when a standard is developed or changed.

We received comments from one State agency and many advocacy groups. The State agency believes that State agencies should only have to submit SUAs for approval when the methodology is being developed or changed. The advocacy groups suggested that State agencies be required to submit their SUAs for approval only once every five years as long as an annual inflation factor is included in the methodology. Further, the advocacy groups are opposed to allowing State agencies to establish a threshold for making adjustments based on cost increases. We agree with the State agency that State agencies should only have to submit their SUAs for approval when the methodology is being developed or changed. We agree with the advocacy groups that an annual review for cost increases is important, however. The proposed rule only required periodic reviews. Based on the comments, we have modified this final rule to require State agencies to submit an SUA for our approval whenever the methodology changes, to require annual reviews by State agencies to assess the need for cost-of-living adjustments, and to require State agencies to make adjustments based on cost increases by rounding to the nearest whole dollar. State agencies will be required to advise FNS whenever the amount of a standard changes.

A number of State agencies have waivers for an LUA. If the State agency's LUA is not consistent with paragraph (d)(6)(iii)(A) in this final rule, it will need to submit a revised LUA for approval. State agencies with LUAs consistent with paragraph (d)(6)(iii)(A) do not need to resubmit them for approval.

C. Entitlement

Section 5(e)(7)(iv) of the Act, as revised by section 809 of PRWORA, provides that recipients of LIHEA are entitled to use an HCSUA only if they incur out-of-pocket heating or cooling expenses in excess of the amount of the assistance paid on behalf of the household to an energy provider, that a State agency may use a separate HCSUA for households receiving LIHEA, and that the LIHEA must be considered to be prorated over the heating or cooling season. Section 2605(f)(2) of the LIHEA (42 U.S.C. 8624(f)) provides that LIHEA payments must be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of such household.

Current regulations at 7 CFR 273.9(d)(6)(ii) provide that the standard utility allowance which includes a heating or cooling component must be made available only to households which incur heating and cooling costs separately and apart from their rent or mortgage. These households include residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering, recipients of LIHEA, or recipients of indirect energy assistance payments other than LIHEA who continue to incur out-of-pocket heating or cooling expenses during any month covered by the certification period. Households in public or private housing with a central meter who are billed only for excess usage are not permitted to use the HCSUA. (Renters must be billed on a monthly basis by their landlords for actual usage as determined through individual metering to be entitled to use the HCSUA.) A household not entitled to the HCSUA may claim actual expenses.

In the proposed 7 CFR 273.9(d)(6)(iii), we clarified and simplified the rules for determining entitlement to an HCSUA. (For more information regarding the background of the provisions governing entitlement to the HCSUA, readers may refer to the preamble to the proposed rule.) The following requirements of the Act and the LIHEA Act were included in proposed 7 CFR 273.9(d)(6)(iii) for clarity:

(1) An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense.

(2) A household that incurs a heating or cooling expense but is located in a public housing unit which has central utility meters and charges households only for excess heating or cooling costs is not entitled to a standard that includes heating or cooling costs. However, the State agency may use the excess costs in developing an overall LUA or develop a standard specifically for households which pay excess heating or cooling costs.

(3) For purposes of determining any excess shelter expense deduction, the full amount of LIHEA energy assistance payments must be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly or indirectly to the household.

(4) An HCSUA must be made available to households receiving energy assistance (other than LIHEA) only if the household incurs out-of-pocket heating or cooling expenses. A State agency may use a separate utility standard for these households.

(5) An HCSUA may not be used for a household that shares the heating or cooling costs with and lives with another individual not participating in the Program, another participating household, or both, unless the HCSUA is prorated between the household and the other individual, household, or both.

(6) A State agency that has not made the use of a standard mandatory (as provided in paragraph (d)(6)(iii)(E)) must allow a household to switch between the standard and a deduction based on actual utility costs at the end of any certification period.

One proposed change would have extended use of the HCSUA to households that live in separate residences but share a single utility meter. Three State agencies and one State association supported this proposed change. No commenters opposed it. Accordingly, we are adopting it as proposed.

Under another proposed change, the HCSUA would have been made available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. One State agency commenter supported this

proposed change, and two State agency commenters opposed it. Although the advocacy groups did not directly address this proposal, we have inferred from related comments that they supported this change. One commenter misunderstood the proposal and thought that we were eliminating the use of the HCSUA for households residing in public housing who are billed separately on the basis of individual usage. This is incorrect; the proposal provides that the HCSUA is available to households that incur heating or cooling expenses separately from their rent or mortgage. We are adopting this provision as proposed. The State agencies opposing it were concerned about errors and disparate treatment between households residing in private and public housing. Section 5(e)(7)(C)(ii)(I) of the Act does not permit use of an HCSUA for a household that does not incur such a heating or cooling expense. However, we believe that the provision simplifies the determination of who is eligible for the HCSUA and makes it less error prone by making more households eligible for the HCSUA. State agencies concerned about errors or the disparate treatment may include the excess heating and cooling costs in its LUA as discussed elsewhere in this rule.

The proposed rule in 7 CFR 273.9(d)(6)(iii) would also have allowed State agencies the discretion to develop and use whatever procedures they deem appropriate regarding anticipation of entitlement to an HCSUA so long as they complied with the requirements of the Act and the LIHEA regarding use of an HCSUA. The advocacy groups suggested that the final rules give states the flexibility to prorate in any manner that reasonably achieves the goal of not providing an inappropriately large SUA to such food stamp households. We believe that the provision as proposed accomplishes that goal, and therefore, we are adopting the provision as proposed.

As indicated above, provisions of LIHEA control (without specifically repealing) sections 5(e)(7)(iv)(I) through (IV) of the Food Stamp Act which provide that: (1) Recipients of LIHEA are entitled to the HCSUA only if they incur expenses that exceed the LIHEA payments, (2) State agencies may use a separate standard for households that receive LIHEA, (3) State agencies using a single allowance are not required to reduce the allowance for households that receive LIHEA, and (4) the LIHEA must be prorated over the entire heating or cooling season. Section 2704(f)(2) of the LIHEA (42 U.S.C. 8624(f)) provides that LIHEA payments must be treated consistently regardless of whether the payments are received directly or indirectly and that the full amount of the payments must be considered to be expended by the household for heating or cooling expenses. These requirements were proposed to be included in new paragraph (d)(6)(ii)(C). We did not receive any comments on this provision and are adopting it as proposed.

We also included in new paragraph (d)(6)(iii) the basic requirements for allowing a deduction when a household receives direct or indirect assistance in paying its shelter expenses. If a household receives direct assistance that is counted as income and incurs a deductible cost, the entire expense is included in the excess shelter deduction computation. If the household's bill is paid by a vendor payment that is counted as income, the household is likewise entitled to the expense. We did not receive any comments on this provision and are adopting it as proposed.

We proposed to delete the last sentence in 7 CFR 273.2(f)(1)(iii) which prohibits a household that wishes to claim expenses for an unoccupied home from using the standard utility allowance. One State agency supported this change; we are adopting it as proposed. We proposed to add a sentence to 7 CFR 273.9(d)(6)(ii)(C) to provide that only one standard utility allowance can be allowed if the household has both an occupied home and an unoccupied home. We did not receive any comments on this provision and are adopting it as proposed.

D. Household Options

Current regulations at 7 CFR 273.9(d)(6)(vii) provide that households may claim verified actual costs rather than a standard allowance (except for the telephone standard). Under current rules at 7 CFR 273.9(d)(6)(viii), households have the right to switch between the use of actual utility costs and a standard at the time of recertification and one additional time during each 12-month period. Section 5(e)(7)(iii)(II) of the Act, as amended by section 809 of PRWORA, provides that a State agency that has not made use of a standard mandatory must allow a household to switch between actual expenses and the standard or vice versa only at recertification. Therefore, the option to switch one additional time during each 12-month period is being removed. Since some households may be certified for 24 months under the certification period requirements of section 3(c) of the Act, as amended by PRWORA, we propose that these households be allowed to switch at the time of the mandatory interim contact. Under the proposed reorganization of the regulations, the ''switching'' requirements would be included in 7 CFR 273.9(d)(6)(iii)(D). Although one State agency opposed the elimination of the household's right to switch one additional time during each 12-month period, we are adopting the provision as proposed because the option to switch one additional time was deleted from the Act by PRWORA.

Current policy is that households may choose between actual expenses and a standard when they move. We proposed in new paragraph (d)(6)(iii)(D) that a household would have the opportunity to select either the standard or actual costs at the new address when that household moves. The advocate groups supported this provision. We are adopting it as proposed.

E. Mandatory Standards

Section 809 of PRWORA amends section 5(d) of the Act to provide in section 5(d)(7)(C)(iii)(I) that a State agency may, at its option, make use of a standard utility allowance mandatory for all households with qualifying utility costs, provided:

(a) The State agency has developed one or more standards that include the cost of heating and cooling and one or more standards that do not include the cost of heating and cooling, and

(b) The standards will not increase Program costs.

Households that are entitled to the standard will not be able to claim actual costs even if they are higher. Households not entitled to the standard will be able to claim actual allowable costs. Using mandatory standards does not bestow entitlement to a standard a household would not otherwise be entitled to receive. For example, households in public housing units which have central utility meters and charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs, but they may claim the LUA.

We proposed to provide in paragraph (d)(6)(iii)(E) that States using both an HCSUA and LUA may mandate use of a standard, provided that use of the mandatory standard does not increase Program costs and the standards have been approved by FNS. Requests for approval to use a single standard for a utility (such as a water standard) would be required to include the figures upon which the standard is based. If a State wants to mandate use of utility standards but does not want individual standards for each utility, the State would be required to submit

information showing the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard and their average utility costs before implementation of the mandatory standards, the standards the State proposes to use, and an explanation of how the standards were computed. Four State agencies and many advocacy groups submitted comments on the mandatory standards provisions. Two State agencies opposed allowing households that are not entitled to a standard to claim actual costs, as proposed in paragraph (d)(6)(iii)(E). The advocacy groups supported retaining the requirement that households not qualifying for any standard be permitted to claim actual costs because without this provision, these households would be denied any consideration for the real utility costs that they incur. We agree with the advocacy groups that the Act entitles households to claim shelter expenses and disallowing these actual costs would run counter to the entitlement.

Three State agencies expressed concerns about the requirements in proposed paragraph (d)(6)(iii)(E) for the approval of mandatory standards by FNS. Two State agencies suggested that States who already have mandatory SUAs should not have to resubmit them for approval. One State agency felt that the requirements were overly proscriptive. We believe that the provisions as proposed are the minimum necessary to meet the requirement of ensuring no Program cost increase. State agencies with approved mandatory standards do not need to resubmit their standards for approval, provided their standards comply with the requirements in paragraph (d)(6)(iii)(A).

Many advocacy groups commented that the prohibition about increasing Program costs because of use of a mandatory standard did not prohibit increasing the costs of standards to reflect increased utility costs and suggested that the regulation be clarified accordingly. We agree with the advocacy groups that a clarification is needed. Accordingly, we are adopting proposed paragraph (d)(6)(iii)(E) with a clarification.

F. Sharing

Section 5(e)(7)(iii)(II) of the Act requires proration of an HCSUA when households live together and share the cost. Current regulations at 7 CFR 273.9(d)(6)(viii) provide that if a household lives with and shares utility expenses with another household, the State agency must prorate a standard among the households or allow the actual costs of each household. The State agency determines the proration method if a standard is used.

Although the Act requires that an HCSUA be prorated among households that share the heating or cooling expense, it does not require that all standards be prorated and does not specify how the HCSUA should be prorated. Therefore, we did not propose to regulate in this area. Two State agencies supported giving State agencies the flexibility to determine the method of proration. Many advocacy groups suggested that the final regulations not require prorating of the SUA if all of the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible. We are adopting this suggestion and have modified paragraph (d)(6)(iii)(F) accordingly.

G. Adjustment of Standard Deduction—7 CFR 273.9(d)(8)

Current paragraph (d)(8) describes adjustments to be made to the standard deduction. Section 809 of PRWORA sets the amounts by year. We proposed removing this paragraph because the amounts are now specified in the law. We received no comments on this and are adopting it as proposed.

7 CFR 273.10

How Will State Agencies Prorate Benefits at Recertification?

Under section 827 of PRWORA, State agencies must prorate benefits at initial certification and at recertification if there has been *any* break in certification following the last month of certification, except for migrant and seasonal farmworker households. For migrant and seasonal farmworkers, the term initial month means the first month for which the household is certified following any period of more than 30 days during which the household was not certified. We proposed to amend 7 CFR 273.10(a)(1)(ii) and 7 CFR 274.10(a)(2) to conform to the new statutory requirement.

We received one comment on this provision from a State agency which suggested that for migrant and seasonal farmworker households, the term initial month should mean the first month for which the household is certified following any *month* during which the household was not certified for participation. This suggestion has merit as food stamp households participate on a calendar or fiscal month basis, not a daily basis. We are adopting this change in the final rule.

We received one comment from an advocacy group which suggested that language be incorporated that prohibited proration if a State agency rather than a household was at fault for a gap in participation. We agree that a household should not be penalized for a State agency error. However, the Act is specific that any break in participation requires proration. In order to ensure that households are not penalized for State agency errors, we have added a reference in section 273.10(a)(2) to provisions in section 273.14(e) concerning delayed processing of recertification applications. This issue is addressed further in the discussion on recertification.

How Will State Agencies Determine the Length of Certification Periods?

Section 801 of PRWORA amended section 3(c) of the Act and eliminated specific certification periods by type of household. PRWORA now provides that the certification period cannot exceed 12 months, except that the certification period may be up to 24 months for households in which all adult household members are elderly or disabled. Section 801 requires that the State agency have at least one contact with each certified household every 12 months.

We proposed to amend 7 CFR 273.10(f) to reflect the new certification period requirements of PRWORA. We proposed that State agencies may certify households for no more than 12 months. However, State agencies may certify households in which all adult members are elderly or disabled for no more than 24 months, provided the State agency makes at least one contact every 12 months with each such household. Therefore, if the State agency certifies a household in which all adult members are elderly or disabled for 18 months, there must be at least one contact with the household by the end of the first 12 months. State agencies may use any method they choose for this contact, including a change report form or a telephone call.

We included a special condition for treatment of one-time medical expenses as averaging an expense over more than 12 months could result in a very small expense each month. Therefore, we proposed to amend 7 CFR 273.10(f)(1)(iii) as follows: Households certified for more than 12 months that incur a one-time medical expense in the first 12 months of the certification period may elect to (1) Budget the expense in one month, (2) average the expense over the remainder of the first 12 months of the certification period, or (3) average it over the remainder of the

certification period. One-time expenses reported after the 12th month of the certification period would be allowed in one month or averaged over the remainder of the certification period, at the household's option. We also proposed to add a reference to the budgeting options to 7 CFR 273.10(d)(3) for conformity. As we received no adverse comments on this change, we are adopting the language as proposed.

In addition to removing the provision of section 3(c) of the Act that the 12-month limit on certification periods could be waived, section 801 of PRWORA removed the requirement that the certification period of households in which all members received PA or GA must coincide with the period of the grant. It also removed the requirement that State agencies certify monthly reporting households for 6 or 12 months, unless FNS granted a waiver. We proposed to revise 7 CFR 273.10(f) and to remove 7 CFR 273.21(a)(3) to reflect these changes. We also proposed to include in the new 7 CFR 273.10(f)(2), the provision at 7 CFR 273.21(t) that State agencies must certify for 2 years monthly reporting households residing on reservations, unless a waiver is approved. This requirement is based on section 6(c)(1)(C)(iv) of the Act, which was not affected by the amendment to section 3(c). As we received no adverse comments on these changes, we are adopting the language as proposed.

We proposed to include in revised 7 CFR 273.10(f)(3) the provision of current 7 CFR 273.10(f)(9) concerning the assignment of certification periods to households claiming a deduction for legally obligated child support payments. State agencies complained about the requirement to limit the certification periods of households claiming the child support deduction. Given the flexibility the Department otherwise provided State agencies to assign certification periods based on the stability of household circumstances in all other instances, they felt they were in the best position to determine the length of the certification period for these households. The advocacy groups supported more flexibility in this area. We agree with the commenters. The Department is dropping the current limitation from the final rule.

However, the advocates also commented on the proposed deletion of certification period requirements in 7 CFR 273.10(f)(4). They felt that the elimination of guidelines for certification period length based on household circumstances would negatively affect households, particularly the working poor. Further, they felt that the increased use of 3-month certification periods as an error reduction tool has proven burdensome and may be part of the cause of the recent caseload reduction. The Department has considered these comments and has reviewed the changes made by PRWORA concerning mandatory certification period lengths. While PRWORA did remove certain mandated requirements, PRWORA did not create any requirements or prohibitions other than the 12 and 24 month maximums. We share the advocates' concerns about the unexplained caseload reductions and the need to reduce the burden involved in participating in the program for low-income working families. Therefore, in response to the comments from the advocates, we have decided to maintain guidelines for assigning certification periods in the regulations. These guidelines are: that households should generally be assigned certification periods of 6 months or greater; that State agencies may assign 3 month certification periods for households with unstable circumstances, such as ABAWDs or household with zero net income; and that certain households may have circumstances that are so unstable or that may only be eligible for a very short period of time that a certification period of one or two months may be warranted. It is anticipated that very few households would be certified for one or two months.

The Department recognizes that short certification periods pose a particular burden to working families by forcing more frequent reapplications that require more visits to the local office and more paperwork. In particular, many low-income workers do not enjoy fully predictable employment situations and their earnings fluctuate. The income reporting options announced by the Department in 1999—status reporting and quarterly reporting—aimed at more effective management of these cases. The new option announced in this regulation to only require reports of changes that make working households income-ineligible is a much bolder step. The Department believes that fluctuating earned income should not force households into short certification periods intended for households with unstable circumstances, but rather that States should use these new reporting options announced in this rule and earlier guidance to successfully manage this portion of their caseload.

Because the Department is aware that State agencies are reluctant to assign working households long certification periods because of potential vulnerability for quality control errors resulting from unreported changes, the Department is adopting in this final rule an optional reporting system for these households. Under this option, households with earned income assigned a six-month or longer certification period may be required to report only changes in income that result in gross monthly income exceeding 130 percent of the monthly poverty income guideline, in lieu of the requirement to report changes in the amount of gross monthly income that exceed $25. State agencies are provided this information by FNS each year, as it is the gross monthly eligibility income standard for households. State agencies should ensure that households understand that the reporting requirement is based on combining all countable sources of income, both earned and unearned, received by household members. This reporting requirement is consistent with Medicaid rules in many States which require families only to report if their income makes them ineligible for Medicaid. These households would not be subject to the remaining reporting requirements in 7 CFR 273.12(a)(1) unless they are certified for longer than six months. Households with earned income that are certified for longer than six months shall be required to submit a report at six months that includes all of the items subject to reporting under paragraph (a)(1).

State agencies are discouraged from certifying migrant or seasonal farmworker households or households in which all members are homeless individuals under this option because these categories of households are exempt from any type of periodic reporting under Section 6(c)(1)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(1)(A)) and thus cannot be required to submit an interim report at six months. However, if the State opts to do so, it may not certify such households for longer than six months.

The State agency shall act on changes reported by the household that increase benefits in accordance with 7 CFR 273.12(c) and on changes in public assistance and general assistance grants and other sources that are considered verified upon receipt by the State agency. For households certified for six months, State agencies may opt to waive every other face-to-face interview in accordance with 7 CFR 273.2(e). This reporting option is incorporated into 7 CFR 273.12(a).

We also proposed to make a conforming amendment to remove 7 CFR 272.3(c)(5) from the regulations and renumber paragraphs (c)(6) and (c)(7).

Paragraph (c)(5), which authorized waivers of the certification period requirements in section 3(c) of the Act, is now obsolete. We also proposed to make a conforming amendment to remove 7 CFR 273.11(a)(5), which addresses certification period requirements for households with self-employment income. This paragraph is unnecessary because PRWORA removed from the Act the provision regarding certification period length for these households. As we received no adverse comments on these changes, we are adopting the language as proposed.

How May State Agencies Adjust the Length of Certification Periods?

To provide more State agency flexibility in its day-to-day operation of the Program, we proposed to add a new section (7 CFR 273.10(f)(4)) allowing State agencies to shorten a household's currently assigned certification period under certain circumstances with a notice of adverse action. Under current policy, State agencies may shorten certification periods (close the food stamp case) once established when a household leaves a PA or GA program, when the State agency needs to adjust the caseload to more evenly distribute the workload, when a household reports a change that indicates that the new circumstances are very unstable, or when the household fails to provide required information regarding a change in household circumstances. When a household's certification period is shortened under these circumstances, the State agency must send a notice of expiration (NOE), or for households subject to monthly reporting, the State agency must shorten the certification period with an adequate notice in accordance with 7 CFR 273.21(m).

We proposed to consolidate in new paragraph (f)(4) most situations where shortening the certification period would be allowed. We proposed to eliminate the use of the NOE as a vehicle for shortening certification periods. In place of the NOE, State agencies would use the notice of adverse action (NOAA) for early case closure. The new paragraph would provide specific authority to shorten the certification period when the State agency has information indicating that the household is not reporting income properly, the household has become ineligible, a household reports a change that indicates that the new circumstances are very unstable, or the household fails to provide adequate information regarding a change in household circumstances other than income. Only in the instances set forth in the new paragraph could State agencies schedule a household for early termination of benefits.

We proposed a two-step process for shortening certification periods. First, the State agency must provide the household written notice that it has reason to believe the household's circumstance have changed. The notice must clearly specify the basis for the State agency's belief and the actions the State agency expects the household to take. The notice must give the household at least 10 days to contact the State agency and clarify its situation. Second, at the end of the period allowed for responding to the notice, the State agency may issue a notice of adverse action to shorten the certification period if: (1) The household does not respond; (2) the household does not provide sufficient information to clarify its circumstances; or (3) the household agrees that changes in its circumstances warrant filing a new application. The notice of adverse action must meet the requirements of 7 CFR 273.13 and explain the reason for the action. We also proposed a conforming amendment to 7 CFR 273.11(g)(5).

The Department's proposal generated much adverse commentary. State agencies and advocacy groups objected to the proposal for shortening certification periods, but for different reasons. State agencies were accustomed to shortening certification periods with the NOE to require the household to clarify its circumstances with a full recertification. Accordingly, they complained of the complexity of the proposed requirement to specify in writing what issues they wanted the household to clarify. Some State agencies thought the two-step process unnecessarily lengthened the time for addressing problem cases. One State commenter questioned the need for a written request for clarification if the household were reporting the change directly to an eligibility worker. On the other hand, advocacy groups worried that State agencies would abuse the procedure by requiring households to recertify based on picayune changes in household income or expenses, or by applying an overly rigorous definition of reported ''unstable circumstances.'' Moreover, they viewed the proposal as inconsistent with the Department's initiatives encouraging State agencies to assign the longest possible certification periods to households. Some thought that the Department should curtail entirely or severely limit the ability of State agencies to shorten certification periods in the final rule.

We are not swayed by the State agencies' objections. The NPRM presented a very strong legal argument for shortening certification periods with the NOAA instead of the NOE. We were very concerned by what has become the routine use of the NOE to shorten certification periods. It appears that eligibility workers have become inclined simply to close cases, without making the effort to determine if the household could continue participation in the Program absent a complete recertification. We believe that use of the proposed two-step process will reduce the number of costly recertifications and preclude households from making needless trips to the food stamp office. Finally, use of the NOAA will bring food stamp case closure procedures into closer conformance with the other Federal safety net programs and many TANF programs.

Nor are we totally swayed by the advocacy groups' fears either. When State agencies assign a certification period to a household, there is no absolute guarantee that benefits will remain constant throughout the certification period, or that the household will remain eligible. Recipient households have an obligation to report changes during a certification period as required by the regulations. State agencies have an obligation to question a household's continued eligibility or benefit amount when eligibility workers receive reports indicating a significant change in household circumstances. We remain convinced that there are times when early closure of a household's case serves a legitimate purpose of preserving Program integrity or furthering payment accuracy. We believe that State agencies will find it is in their own best interest to assure that eligibility workers explore continuing eligibility with households before taking steps to close the food stamp case. Finally, the requirement to use the NOAA prior to closing the case affords the household the protection of requesting a fair hearing and continuation of benefits up to the end of its original certification period.

The Department is retaining the basic proposal, with some modifications reflecting the comments received. The final rule adds a new paragraph (4) to section 273.10(f), which provides only two basic instances when the State agency may shorten a certification period. These are: (1) When the State agency receives information which indicates that the household is ineligible and (2) when the household does not cooperate in clarifying its circumstances. State agencies must use the NOAA in any instance where it is necessary to terminate benefits during

the certification period. A prohibition against using the NOE to shorten certification periods has been added to section 273.10(f)(4). Henceforth, State agencies will use the NOE only in the manner originally envisioned in the Act, that is, simply as a vehicle for notifying households that their assigned certification period is coming to an end, and outlining the procedures for continuing their participation in the Program. The Department decided that it would be extremely difficult, if not impossible, to develop criteria for early closure of cases which eligibility workers could apply fairly and consistently. In letter after letter, commenters pointed out the difficulty households have in simply contacting local agencies, much less getting an appointment for an interview, if their case is closing. Case closure places households where the adult members are either workers or care givers particularly at risk of becoming non-participants, even though they continue to be eligible. The Department wishes State agencies to apply a consistent policy that a household must be ineligible for benefits before its case is closed, either because it no longer meets the criteria for participation or because it does not cooperate in clarifying its circumstances. Loss of public assistance benefits or a change in employment could not be considered sufficient in and of itself to meet the conditions for shortening a certification period. Accordingly, we took the approach in the final rule that State agencies must work with households to clarify their circumstances and adjust benefit amounts, in accordance with sections 273.12(c)(1) and 273.12(c)(2), *without* requiring a complete recertification. If an eligibility worker feels that a household's circumstances are ''unstable,'' then the worker should emphasize reporting requirements with the household.

We are also adopting the conforming amendment to 7 CFR 273.11(g)(5), with a modification to include a reference to changes reported in accordance with the provisions of 7 CFR 273.21.

We are addressing the procedural aspects of processing unclear information in a new section 273.12(c)(3). We direct readers to that section of the preamble for further discussion of shortening certification periods.

Finally, in paragraph (f)(5), we proposed to continue to prohibit lengthening of a household's current certification period once it is established. State agencies commented that the proposal was antithetical to other provisions in the proposed rule which allowed greater flexibility in setting the length of certification periods. Advocacy groups felt that the Department should allow State agencies to extend certification periods. An extension of the food stamp certification period to align the case with review dates of other State-administered assistance could avoid more frequent and possibly redundant food stamp reviews. The final rule allows State agencies to extend certification periods. This authority to lengthen certification periods gives States broad flexibility to extend certification periods, such as to align the food stamp certification period with the Medicaid certification period. However, PRWORA limits certification periods to 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. The final language stipulates that the total months of the certification period cannot exceed the statutory limits. We are also requiring that the household must receive proper notification if the State agency extends the certification period. State agencies must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in section 273.10(g)(1)(i)(A). This will assure that the household is aware of its extended certification period, as well as its rights and responsibilities during the extended period.

Self-Employment Expenses—7 CFR 273.11(a)(4) and (b)(2)

Current regulations at 7 CFR 273.11(a)(4) contain requirements for determining the allowable costs that can be excluded in determining the amount of self-employment income to be counted. Paragraph (a)(4)(i) provides that the allowable costs of producing self-employment income include, but are not limited to, certain identifiable costs. Section 273.11(b)(1) provides that households with income from boarders may elect from among several methods of determining the cost of doing business, including a flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual. Paragraph (b)(2) provides that households with income from day care may choose one of the following in determining the cost of meals provided to the individuals: the actual documented costs of meals, a standard per-day amount based on estimated per-meal costs, or the current reimbursement amounts used in the Child and Adult Care Food Program. We proposed to consolidate allowable costs of producing self-employment income and include them in a revised paragraph (b). We did not receive any comments on the proposed reorganization and are adopting it as proposed.

To simplify the certification process and respond to State agency requests for increased flexibility, we proposed to add in new paragraph (b)(3)(iv) (mistakenly identified as paragraph (b)(3)(iii) in the preamble of the proposed rule) an option for State agencies to use the same standard self-employment expense amounts or percents established for households receiving TANF benefits under Title IV–A of the Social Security Act. We received comments from three State agencies and one State association supporting this proposal. We are adopting it as proposed.

In addition, section 812 of PRWORA required the Department to establish by August 22, 1997, a procedure by which a State may submit a method for producing a reasonable estimate of the cost of producing self-employment income in place of calculating actual costs. FNS issued a guidance memorandum in compliance with the statutory requirement on August 1, 1997. The method proposed by the State agency and submitted to FNS for approval must be designed so that it does not increase Program costs. The method may be different for different types of self-employment.

To implement the provisions of section 812 of PRWORA, we proposed to amend 7 CFR 273.11 to provide in new paragraph (b)(3)(iv) that State agencies may submit requests to FNS to use a simplified method of calculating self-employment expenses for specified categories of businesses. The request must include a description of the proposed method, information concerning the number and type of households affected, and documentation indicating that the proposed procedure would not increase Program costs. We received comments from one State association and three State agencies recommending that FNS develop the standards rather than the individual State agencies. Section 812 of PRWORA provides that States agencies are to submit the methods. Therefore, we are not adopting the commenters' suggestion.

We also received comments from advocates that recommended that the rules allow a State agency to include in any standardized figure an amount that represents the typical capital costs associated with self-employment. Current policy at 7 CFR 273.11(a)(4)(ii) precludes allowing the cost of capital

assets in determining self-employment income. In response to this comment, we are taking the opportunity to revise our policy to allow capital costs in determining self-employment income. We believe that this change recognizes that capital costs are a legitimate expense in producing self-employment income and that the change will support the self-employed working poor. Accordingly we have revised the proposal to delete proposed paragraph (b)(2)(i) and have redesignated proposed paragraphs (b)(2)(ii) and (iii) as paragraph (b)(2)(i) and (ii) respectively. We have modified paragraph (b)(1) to include capital assets as an allowable cost.

Current regulations allow households to choose between a standard amount or actual costs in claiming expenses incurred in producing boarder and day-care income. However, section 812 of PRWORA requires FNS to establish a procedure whereby States may request to use a method of producing a reasonable estimate of excludable expenses ''in lieu of calculating the actual cost of producing self-employment income.'' In accordance with this provision, we proposed in new paragraph (b)(3) that State agencies, rather than households, must determine whether to use actual costs or another approved method to determine self-employment expenses. We received comments from two States agencies and one State association supporting this proposed change. We are adopting it as proposed.

We also proposed to take this opportunity to completely revise 7 CFR 273.11(a) to simplify the regulations and increase State agency flexibility. Currently, 7 CFR 273.11(a) contains special procedures for determining a household's income from self-employment. Current regulations provide that income received from self-employment is offset by the cost of producing the self-employment income. The remaining income is then averaged over the number of months it is intended to cover. We proposed to revise and combine portions of paragraphs (a)(1), (a)(2), and (a)(3) and remove superfluous language and examples without changing any policy contained in those provisions. In addition to the comments discussed above concerning capital costs, we received comments from one State agency supporting the revision of 7 CFR 273.11(a) and one State agency suggesting that State agencies be allowed to determine what allowable costs could be excluded. As discussed above, we have changed the policy concerning capital costs. Other than this modification, we are adopting the revisions as proposed.

To increase State agency flexibility, we would eliminate some prescriptive requirements in the current regulations at 7 CFR 273.11(b) regarding the treatment of shelter expenses paid by boarders. Currently, paragraph (b)(1)(i) specifies that contributions made by the boarder to the household to cover its shelter expenses are included as income to the household. The current provision further specifies that expenses paid by the boarder to someone outside of the household cannot be counted as income to the proprietor household. In addition, the current regulation in paragraph (b)(1)(iii) provides requirements addressing whether costs paid by the boarder count in determining the proprietor household's entitlement to a shelter deduction. We proposed to eliminate these prescriptive requirements in favor of letting State agencies determine the appropriate way to handle these shelter expenses. Two State agencies and one State association supported the proposed revision. Accordingly we are adopting paragraph (b)(3)(ii) as proposed.

Treatment of the Income and Resources of Ineligible Aliens—7 CFR 273.11(c)(2)

Current regulations at 7 CFR 273.11(c)(2) provide that the benefits of a household containing either a person disqualified for failure to provide a social security number or an ineligible alien must be determined as follows: the resources of the ineligible member count in their entirety to the rest of the household; all but a pro rata share of the ineligible household member's income is counted; and the 20 percent earned income deduction is applied to the prorated income earned by the ineligible member, and all but the ineligible member's pro rata share of the household's allowable shelter, child support, and dependent care expenses which are either paid by or billed to the ineligible member is allowed as a deductible expense for the household. We proposed to renumber paragraph (c)(3) as (c)(4), to remove the provisions regarding ineligible aliens from (c)(2), and to add a new paragraph (c)(3) for ineligible aliens.

Section 818 of PRWORA amended section 6(f) of the Act (7 U.S.C. 2015(f)) and grants State agencies the statutory authority to count all or all but a pro rata share of the income of an alien who is in an ineligible category listed under the alien provisions of 6(f) of the Act, *i.e.,* those ineligible prior to PRWORA. They are primarily visitors, tourists, diplomats, students, and undocumented aliens. Proposed paragraph (c)(3) would provide that State agencies must count all of the resources and either all or all but a pro rata share of the income and deductions of these ineligible aliens. Excluded from the provisions of (c)(3)(i) are the categories of aliens eligible under the Act listed in new paragraphs (3)(i)(A) through (E).

One State agency asked if it could count all of the alien's income for purposes of applying the gross income test and only all but a pro rata share for other purposes. The State agency was concerned that counting a pro rata share of the alien's income could result in some households with ineligible aliens being eligible whereas a similar household made up of citizens with the same income would be ineligible based on gross income. To remedy this situation, we proposed to allow the State agency to count all of the alien's income for purposes of applying the gross income test for eligibility purposes but only count a pro rata share for applying the net income test and determining the level of benefits. This State agency option applies to aliens who do not meet the alien eligibility requirements in section 6(f) of the Food Stamp Act.

PRWORA made additional categories of aliens ineligible for food stamp benefits, beyond those ineligible under section 6(f) of the Act. The majority of these aliens are refugees and asylees who have been in this country for more than 7 years and lawful permanent residents except those who can be credited with 40-quarters of work or who were living in this country on August 22, 1996, and were elderly on that date or are now disabled or under age 18. PRWORA did not address the treatment of the income and resources of these additional categories of ineligible aliens. Congress did not grant State agencies statutory authority to count all or all but a pro rata share of the income of PRWORA-ineligible aliens. Further, the amended version of subsection 6(f) of the Act is explicitly limited by its plain language to aliens in categories ineligible prior to the enactment of PRWORA. In the preamble of the NPRM, we examined various options for counting the resources and income of those categories of PRWORA-ineligible aliens and selected two options for comment.

We proposed to allow the State agency to pick one State-wide option for determining the eligibility and benefit level of households with members who are aliens made ineligible under PRWORA. State agencies may either: (1) Count all of the aliens' resources and a pro-rated share of the aliens' income and deductions; or (2) count all of the

aliens' resources, not count the aliens' income and deductions, but cap the resulting allotment for the eligible members at the allotment amount the household would receive were it not for the PRWORA eligibility restrictions. Option (1) merely continues the policy that most State agencies are pursuing with respect to PRWORA-ineligible aliens. State agencies operating State Option Programs under section 8(j) of the Act may find option (2) attractive in terms of simplifying administration. This option would require two benefit calculations. In calculation (1), the State agency would determine eligibility and benefit level as if all PRWORA-ineligible aliens could still receive Federal benefits. In calculation (2), the State agency would determine eligibility and level of benefits for the eligible members, excluding the income and deductions of the PRWORA-ineligible aliens; however, the benefit amount could not exceed the amount determined in calculation (1). In State Option Programs, the difference between calculation (1) and calculation (2) would be the State's share of benefits payable to FNS. Funding for state-to-state technical assistance visits will be available through our State Exchange program for States wishing to learn about the automation procedures necessary for implementation of this option. We proposed to allow a second variance exclusion period under 7 CFR 275.12(d)(2)(vii) for States which implement option 1, and then decide at a later date to implement option 2. For aliens ineligible under section 6(f) of the Act and for those unable or unwilling to document their alien status, the proposed rule would reflect the statute which permits the State agency the option to count all or all but a pro rata share of such an alien's income and require that all of such an alien's resources be counted.

The Department's proposals generated a great many comments. Many State agencies thought the proposal to distinguish between aliens ineligible under the Act and those ineligible under PRWORA was too complex. They felt that Congress intended to allow State agencies to apply the same options for treatment of income and deductions to all aliens. Several State agencies praised the Department's decision to allow the ''option 2'' treatment. Other State agencies decried this option, stating that they might feel pressure to implement ''option 2,'' should the Department offer that option in the final rule. One State agency stated that its State Option Program provides benefits to all qualified aliens, not just the categories of aliens set forth in proposed paragraphs (3)((i)(A) through (E). Accordingly, the State agency suggested that the Department adjust the proposed language to provide simply that all qualified aliens are excluded from the provisions of (3)(i). On the other hand, advocacy groups generally favored the options offered; however, some had reservations. One such group worried that State agencies would find ''option 2'' complex to administer and error-prone. Thus, State agencies would be reluctant to implement an otherwise helpful option. The group suggested that the Department modify ''option 2'' as follows. The State agency would apply the gross income test to the household, including the PRWORA-ineligible alien members. If the household passed the gross income test, the State agency would exclude the PRWORA-ineligible alien's income and deductions to determine the benefit amount. At its discretion, the State agency could add a second calculation as in ''option 2'' to prevent an increase in benefits.

After carefully considering the comments on this issue, the Department has decided to adopt the proposed language in the final rule, with some modifications. We are not changing the options available to State agencies for treatment of the income and deductions. We believe the rationale provided in the preamble to the NPRM for proposing these options still remains valid. As is always the case when the Department offers options in the regulations, or chooses not to regulate a certain matter, State agencies must be prepared to defend the decisions taken with respect to choosing a particular option or dealing with the unregulated matter. The Department is not adopting the State agency's suggestion to exempt only qualified aliens from the provision allowing a State agency to count all of the ineligible alien's income and deductions, but excluding that member from the household for the eligibility and benefit calculation. The purpose of the provision in the proposed rule was to give some degree of protection to now-ineligible aliens who were eligible prior to the PRWORA amendments. To that end we are adding to the final rule two groups of aliens we inadvertently omitted from the proposed language, aged, blind, or disabled aliens admitted for temporary or permanent residence under section 245A(b)(1) of the INA; and special agricultural workers admitted for temporary residence under section 210(a) of the INA. Further, the Department feels that the rulemaking process is not the most appropriate venue for dealing with the intricacies of State Option Programs. FNS will work with State agencies through the plan approval process to give State agencies the maximum possible latitude to craft State Option Programs which are responsive to each State's unique situation. Finally, the Department is not adopting the advocacy group's suggestion for modifying ''option 2.'' We considered and discarded similar options in formulating the NPRM. The Department wants to avoid creating a regulatory scheme where similarly situated households in which all members are either U.S. citizens or eligible aliens would receive less benefits than a household in which some members are in food stamp eligible status and others are not.

To conform to the changes the Department is making to the provisions for deeming of sponsor income and resources, we are changing paragraph (c)(3)(v) to specify that State agencies must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

Residents of Drug and Alcohol Treatment and Rehabilitation Centers—7 CFR 273.11(e)

Current rules at 7 CFR 273.11(e) set forth the procedures for certifying residents of a drug addict or alcoholic treatment and rehabilitation (DAA) centers for Program participation. In the NPRM, the Department proposed to revise the title of paragraph (e) and paragraphs (e)(1) through (5) to make the procedures clearer, to add two new provisions contained in section 830 of PRWORA, and to take into account electronic benefit transfer (EBT) issuances.

Paragraph (e)(1) of current rules provides that individuals in DAA centers may individually apply for food stamp benefits, but certification must be accomplished through an authorized representative who is an employee of the treatment center. Section 830 of PRWORA amended section 8 of the Act (7 U.S.C. 2017(f)) to allow the State agency the option of requiring households to designate the DAA center as their authorized representative for the purpose of receiving allotments on behalf of the households. In the NPRM, we proposed that this change be included in new paragraph (e)(1) and that it apply only with regard to obtaining and using benefits on behalf of the household. The current regulatory requirement in paragraph (e)(1) that households residing in treatment centers must apply and be certified through an authorized representative would continue to apply.

Paragraph (e)(5)(i) of current rules provides that if a resident leaves the DAA center, the center must provide the household with its full allotment if the allotment has been issued and no portion of the allotment has been spent by the center on behalf of the household. If a resident household leaves the center prior to the 16th of the month and a portion of the allotment has already been spent by the center on behalf of the household, the center must provide the departing household with one-half of its monthly allotment. If the household leaves the center on or after the 16th of the month, the household is not entitled to any portion of the allotment. The center must return any unspent benefits of a household that has left the center to the State agency. Section 830 of PRWORA amended section 8 of the Act to allow State agencies the option of providing an allotment for the individual to: (a) The center as an authorized representative for a period that is less than 1 month; and (b) the individual, if the individual leaves the center. Since State agencies will generally not know in advance when a resident is going to leave the center, we proposed to allow State agencies to routinely issue allotments for household's in DAA centers on a semi-monthly basis, *e.g.,* half of the allotment could be issued on the first of the month and half could be issued on the 16th of the month.

We also proposed to amend current regulations at 7 CFR 273.11(e)(2) to take into account various EBT systems being used. We did not endorse any single EBT design, but did require that any design or State procedures used as part of the design used to accommodate DAA facilities assure that a household has access to one-half of its allotment when it leaves the center before the 16th of the month.

We also proposed to delete current paragraphs (e)(3)(i) through (iii) which provide that the expedited and regular processing standards apply to residents of DAA centers as well as other households and the requirement for the State agency to process changes in circumstances and recertification for these households the same as other households. These provisions still apply, but it is not necessary to specifically mention them.

We received two comments on our proposed revisions to 7 CFR 273.11(e), both supportive of the proposed changes. One commenter submitted a suggestion for a new system of issuance for DAA centers. That suggestion is outside the purview of this regulation and cannot be addressed at this time. However, we have forwarded the suggestion to the proper area in the Department for its consideration. We are adopting the proposed revisions to 7 CFR 273.11(e) as final.

Reporting Changes—7 CFR 273.12

How Will State Agencies Process Reported but Unclear Information on Case Changes?

As stated before in the discussion of changes to 7 CFR 273.10, we are clarifying the circumstances under which a State agency must send a NOAA to shorten an assigned certification period. To emphasize that State agencies must determine if a household is in fact ineligible before the State agency may close its case, the final rule adds a new section 273.12(c)(3), which sets forth the procedure for acting on unclear information. During the certification period, the State agency may obtain information about changes in a household's circumstances from which the State agency cannot readily determine the effect of the change on the household's benefit amount. The State agency might receive such unclear information from a third party or from the household itself. The State agency must pursue clarification and verification of household circumstances by issuing a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances. The RFC must allow the household at least 10 days to respond and to clarify its circumstances, either by telephone or by correspondence, as the State agency directs. The RFC must also state the consequences if the household fails to respond to the RFC, that is, case closure. Consistent with the existing procedure at 7 CFR 273.2(f)(9)(v) for independent verification of information received from IEVS, the State agency must issue a NOAA if the household does not respond at all to the notice requesting that it contact the food stamp office to clarify its circumstances. Once the household has contacted the State agency, it must refuse to cooperate with requests to clarify its circumstances before the State agency may close its case. When the household responds to the RFC and provides sufficient information, the State agency must act on the new circumstances in accordance with normal change processing time frames.

One State agency suggested that we allow a procedure it employs in its TANF program. Instead of outright termination of cases where families do not respond to requests to clarify circumstances, the State's TANF program *suspends* such cases for 1 month before termination. The TANF case receives a NOAA stating that after the adverse action period expires, the State agency will suspend cash assistance for 1 month. If the family responds satisfactorily during the suspension period, the State issues the payment for the month of suspension, and, if necessary adjusts the cash payment with a subsequent NOAA. This procedure fits well with the proposed two-step procedure and has merit as the State agency reinstates households without their needing to file an application, if they responded satisfactorily during the suspension period. The final rule allows this procedure as a State agency option.

How Will TANF Leavers Transition to Nonassistance Food Stamps?

We proposed to retain the long-standing procedure for adjusting the certification periods of households leaving the TANF rolls, with a modification. Current 7 CFR 273.12(f)(4) requires that State agencies adjust food stamp participation of TANF leavers with a NOAA when it is clear that changes in the household's circumstances require a reduction or termination of benefits. Current 7 CFR 273.12(f)(5) outlines the procedures a State agency must follow when TANF leavers do not fully apprise the State agency of their new circumstances and the State agency does not possess enough information to make an informed determination about their continuing food stamp eligibility. In this instance, the State agency closes the food stamp case with a NOE. Despite our concerns over the legal sufficiency of using the NOE in lieu of the NOAA, we provided a rationale for continuing its use in this limited instance. However, we recognized that in some cases, the State agency might need only one or two pieces of information or documentation to determine continuing food stamp eligibility, depending on the level of information available in the case file. We believed it would be preferable to avoid requiring the household to report for a full recertification, if a response to a notice to the household requesting information could clear up a few remaining points of eligibility. Thus adjusting the household's participation with a NOAA would be appropriate. Accordingly, we proposed an option which would allow State agencies to close cases with a notice of adverse action, provided the State agency has sent the household a notice clearly specifying the actions the household must take to continue its eligibility.

The few State agencies that commented on the proposal thought the Department should not change the current procedure. However, many advocacy groups commented that, in many cases, local agencies simply terminate the food stamp cases of TANF leavers without any effort to explore their continuing eligibility for food stamps. Advocacy groups felt that TANF leavers have the impression that cash assistance and food stamps are inextricably connected and that filing an application for food stamps after cash assistance ends would be futile. Sadly, a Mathematica Policy Research review of the recent literature on access and participation in food stamps and Medicaid by TANF leavers study (Dion and Pavetti, pp 14–15, 23 and 32) had similar findings. The Department of Health and Human Services funded this review with financial assistance from the Department.

Upon reviewing the public comments on this provision, it became clear to us that the requirements of 7 CFR 273.12(f)(4) are honored more in the breach. With or without the sanction of the State agency, eligibility workers seem to issue routinely a NOE to *all* TANF leavers, without exploring the household's continuing eligibility for food stamps. This inappropriate use of the provisions of 7 CFR 273.12(f)(5) might account for at least a part of the decline in food stamp participation in some States. Failure to follow the requirements of 7 CFR 273.12(f)(4) violates a clear mandate of the Act. Section 11(i)(2) of the Act (7 U.S.C. 2020(i)(2)), which remains unchanged by PRWORA, stipulates that: ''* * * [N]o household shall have * * * its benefits under the food stamp program terminated solely on the basis that * * * its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 5(a) [TANF, SSI and AABD programs] and *without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.*'' [Emphasis added.]

In the final rule the Department is taking firm action to implement the statutory mandate. As stated previously in the discussion of the amendment to 7 CFR 273.10(f)(4), the final rule eliminates entirely the use of the NOE to shorten certification periods. We are collapsing current 7 CFR 273.12(f)(4) and 7 CFR 273.12(f)(5) into one paragraph which sets forth the procedures for reviewing the participation of food stamp households who are leaving cash assistance. There is no change in the procedure for adjusting food stamp participation when the State agency is fully aware of the household's circumstances. However, if circumstances are unclear, the State agency must attempt to contact the household to elicit enough information to make a determination on the household's continuing food stamp eligibility. Using the two-step procedure set forth at 7 CFR 273.12(c)(3) will assure that TANF leavers receive a thorough review of their food stamp case contemporaneously with the TANF closure action and an opportunity to present or clarify its circumstances *prior to* any action to close the food stamp case.

The revised procedure dovetails with the Medicaid policies stipulating that States may not deny Medicaid eligibility to a family or family member simply because the family is ineligible for TANF. Nor may a State deny Medicaid eligibility because a family member loses eligibility under a particular Medicaid eligibility category. Under the Medicaid program, *States are prohibited from denying or terminating Medicaid eligibility unless all possible avenues to Medicaid eligibility have been affirmatively explored and exhausted.* The final rule makes it clear that the Federal government expects State agencies to assure that eligibility workers evaluate TANF leavers for continuing eligibility in the Federal safety net programs to which they are entitled.

Transitional Food Stamps for TANF Leavers

Several advocacy groups put forth a suggestion for providing TANF leavers ''transitional food stamp benefits,'' much in the same way families receive transitional Medicaid after leaving the TANF rolls. Transitional food stamp benefits would serve several purposes. First, providing a known amount of food stamp benefits assistance would provide a critical work support that helps a household meet its nutritional needs while making the transition from TANF cash assistance. Second, transitional food stamp benefits provide time for household circumstances to stabilize before the State agency attempts to redetermine eligibility and benefit levels. Further, providing transitional food stamps would reinforce with households the fact that food stamp participation is not dependent upon eligibility for TANF. The Department agrees with this suggestion. In the final rule we are offering State agencies an alternative procedure for issuing transitional benefits. The details are set forth below.

What Is the Transitional Benefits Alternative (TBA)?

The gist of the new policy is that the State agency would freeze food stamp benefits of households leaving TANF rolls for up to 3 months, depending on the period of time since the household's last certification. Near the close of the transition period, the State agency would act on information collected from the household, either adjusting the benefit level, or closing the household's food stamp case because it is no longer eligible or it has failed to provide sufficient information to continue its eligibility for the Program. In some cases, the State agency would have to conduct a full recertification of eligibility, if it was not possible to extend the household's certification period beyond the statutory maximum for its circumstances. As the household would have no reporting requirement during the transitional period, the State agency would incur no QC liability for unreported changes in household circumstances during the period of time benefits are frozen.

Providing States the ability to offer transitional benefits is consistent with those provisions of the Act which give the Secretary broad authority to determine the most expedient way of moving families from participating as recipients of both TANF and food stamps to participating in food stamps without cash assistance. Congress generally left it to the Secretary's discretion to define through regulations the establishment of reporting systems and action time frames.

Is TBA Mandatory or Optional?

While the Department encourages State agencies to offer TBA to households leaving the TANF rolls, in order to ease the transition from PA, we did not offer this procedure in the NPRM. State agencies had no opportunity to comment, either to raise objections or to provide suggestions. For this reason, the final rule establishes TBA as a State agency option, not a mandatory provision of the regulations. As noted previously, State agencies electing the TBA would incur no QC liability for unreported changes in household circumstances during the period of time benefits are frozen.

How Would It Work?

When the State agency takes action to close a household's TANF case, it would freeze the household's food stamp benefit amount for a maximum of 3 months. This is the household's transition period. The State agency could extend the household's

certification period, if necessary, to provide the 3-month transition period. The end of the transition period does not require recertification, so State agencies can also extend the certification period beyond the 3-month transition period. However, the State agency must not exceed the statutory maximum, usually 12 months since the last certification.

Any freezing of benefits presupposes some degree of suspending action on reported changes. Freezing benefit amounts could be accomplished in several different ways. The commenters suggested freezing benefits by switching TANF leavers from prospective eligibility and budgeting to retrospective budgeting and eligibility. However, the Department did not adopt this suggestion. Instead, in the final rule we adopted the approach of lengthening the time frame State agencies have to act on changes in household circumstances. Families leaving TANF would receive a ''Transition Notice'' (TN) advising the household that due to the closure of cash assistance, food stamp participation will need reevaluation; the food stamp allotment is stabilized at the pre-TANF closure amount; and the household will not have to report changes to the food stamp office. However, by a date certain, the State agency must have enough information to keep the household's certification in force. In this regard, the TN would act very much like the RFC process described previously. Also, if the household will lose income as a result of the closure of its TANF case, the State agency must notify the household the frozen benefit amount reflects the loss of cash assistance. In some cases, the State agency would have to schedule the household for a full recertification because the household could receive no more extensions of its certification period. In such circumstances the TN would look very much like a NOE. If the household does report changes in its circumstances during the transition period, the State agency must adjust the household's benefit amount in accordance with normal procedures if the change would increase benefits. For example, the household might lose a source of income or incur a new expense. However, if the reported change would decrease benefits, the State agency would defer acting on that change until the month after the last month of the transition period. The Department believes that the final rule gives State agencies maximum flexibility to address notice requirements for the various circumstances under which food stamp household leaving the TANF program may have their food stamp participation reevaluated and continued, if eligible.

As the transition period ends, the State agency would close the food stamp case or adjust the household's benefit level with a NOAA based on the information collected through the TN process during the transition period, recertify the household after issuing a NOE if it has reached the maximum number of months in its certification period during the transition period, or close the case with a NOAA, if the household had not provided sufficient information through the TN process during the transition period to determine continuing eligibility. At the end of the transition period, the State agency may extend the household's certification period in accordance with § 273.10(f)(5).

What Groups of TANF Leavers Would Get TBA?

Families generally leave TANF when they go to work, exceed the income or assets limits (due to employment or other factors), fail to comply with the behavioral or procedural requirements of TANF, reach the Federally or State-defined time limit, lose technical eligibility, or leave voluntarily to ''bank'' their TANF months. For State agencies electing the TBA, the Department has structured the final rule to allow maximum flexibility in deciding which families leaving TANF would be eligible for TBA. The final rule requires State agencies, at a minimum, to provide TBA to all families with earnings who leave TANF. If the household is losing income as a result of leaving TANF, the State agency must adjust the food stamp benefit amount *before* freezing the benefit amount. For example, such treatment might be appropriate when a TANF family leaves cash assistance because it has reached the time limit for such assistance and has gained no source of income which would replace the lost cash assistance. On the other hand, under the final rule State agencies may not provide TBA to households which are leaving TANF because: A household member has violated a TANF provision and the State is imposing a comparable food stamp sanction in accordance with sections 819, 829, or 911 of PRWORA; a household member has violated a food stamp work requirement; a household member has committed an intentional Program violation; or the TANF case is closing because the State agency is taking action in response to information indicating the household failed to comply with food stamp reporting requirements, *e.g.,* the State agency discovered unreported income or assets through computer matching indicating noncompliance with food stamp reporting requirements. The Department chose not to allow participation of such households in TBA for several reasons. First, it would not be fair to households who have broken no food stamp rules and are compliant with food stamp reporting requirements to provide a special treatment to households which are under sanction for food stamp noncompliance or which are not complying with food stamp reporting requirements. Second, the State agency is well aware of the circumstances of households which are noncompliant with cash assistance requirements and which are incurring a comparable food stamp sanction, or have violated other food stamp requirements, or food stamp reporting requirements. Beyond the groups the Department has determined must or must not participate in TBA, the State agency is free to specify any additional group or groups of TANF leavers for participation in TBA. However, it is important to point out that households that are ineligible for transitional benefits based on these restrictions may still be eligible for food stamps. State agencies must determine their continued eligibility based on procedures at § 273.12(f)(3).

How Would QC Review These Cases?

QC will determine whether the State agency correctly selected the household for TBA. If the State agency incorrectly assigned the household to TBA, QC will review the case following standard QC procedures. If the State agency terminated a household's benefits and the State agency should have assigned the household to TBA, the QC reviewer will cite an invalid negative action. If the State agency correctly assigned and issued the household TBA, then the QC reviewer will continue to determine the appropriate benefit level according to the following procedures:

1. The QC reviewer will cite in the error determination any errors that exist at the time the benefits are frozen for the 3 additional transitional months.

2. The QC reviewer will do a comparison between the certification of the sample month versus the actual sample month circumstances to determine if the case is within the $25 tolerance for citing an error.

3. The QC reviewer will focus on the circumstances in the last month prior to issuance of TBA to determine the benefit amount for the sample month.

4. The QC reviewer will determine if the State agency appropriately processed any reported circumstances

that would result in an increase in benefits.

Notice of Adverse Action—7 CFR 273.13

We proposed to amend 7 CFR 273.13(a)(1) to clarify that the Notice of Adverse Action (NOAA) is considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice for its public assistance caseload, provided that the notice period is a set period of time which is no less than 10 days and no more than 18 days from the date the notice is mailed to the date the notice period expires. We did not propose any change to current regulations which provide that the adverse action take effect in the month following the month in which the notice expires, unless the household has requested a continuation of benefits pending the outcome of a fair hearing. The few State agencies that commented on this provision opposed it. They believe that the current rule accommodates State flexibility in setting advance notice periods to conform with TANF and warrants no change. One State agency felt that tying the food stamp advance notice period to the TANF period would limit access to the program because TANF time frames are more stringent. One State agency commented that its current advance notice period could be longer than 18 days because of a court-ordered settlement. Advocate groups favored maintaining the 10-day floor on the minimum advance notice period, but urged us to allow State agencies to conform the advance notice period with the Medicaid, even if the Medicaid advance notice period is more than 18 days. In response to the commenters' concerns, we have decided to retain the current rule to maintain the current level of flexibility for State agencies. The rule continues to allow State agencies to conform food stamp and Medicaid NOAA time frames with TANF, so long as there is a minimum of 10 days. As we noted in the preamble to the proposed rule, most State agencies currently have a notice period of 10 to 18 days. Thus the proposed change would have little impact on current Program costs.

Recertification—7 CFR 273.14

We proposed to amend 7 CFR 273.14 to conform the recertification application process to the changes made pursuant to PRWORA relative to the initial application process (discussed earlier in this preamble). More specifically, we proposed to:

(1) eliminate reference to a model notice of expiration (NOE).

(2) remove the sentence encouraging State agencies to send a recertification form, interview appointment letter, and statement of required verification with the NOE.

(3) remove certain requirements about the application form for recertification and replaced these with general requirements, specifically: (a) That the recertification process must only be used for those households applying for recertification prior to the end of the current certification period; (b) that the State agency must, at a minimum, obtain sufficient information that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility; (c) that the method of obtaining and recording information from the applicant household must be established by the State agency and may include a specially designed recertification application or the State agency may choose to simply annotate changes since the last certification on an existing application; (d) that the State agency must issue a notice of required verification, which would provide a clear written statement of the acts a household must perform to cooperate with the application process, identify potential sources of verification, and offer assistance to special needs households; and (e) that a new signature, whether handwritten or electronic, be obtained from the applicant at the time of each recertification.

(4) remove the option allowing State agencies to request the household to bring the recertification form to the interview or return it by a specified date because it is unnecessary.

(5) require only one face-to-face interview once every 12 months, regardless of the number of interim certification periods. Further, if the State agency conducts a telephone interview, the State agency must mail the application to the household to obtain the necessary signature.

(6) eliminate the requirement that the State agency conduct an annual face-to-face interview at the same time as the PA or GA interview.

(7) remove the option that the State agency may schedule an interview prior to the recertification application filing date, provided that the household was not denied for failure to attend such an interview and remove the requirement that the State agency schedule an interview on or after the date the application was filed if an interview was not previously scheduled and that the State agency reschedule any missed interview scheduled prior to receipt of an application. We proposed to retain the requirement that the State agency schedule interviews so that the household has at least 10 days to provide the required verification before the certification period expires.

(8) remove the requirements regarding the notice of required verification and clarify that benefits cannot be prorated if the time period for providing verification extended beyond the end of the certification period.

(9) revise and simplify the language regarding delays in application processing but retain the current State agency options. For a more detailed explanation of the proposed changes, the reader should refer to the proposed rule.

We received comments from one State association, four State agencies, and many advocacy groups. The State association and the States generally supported the proposed changes as more flexible. The advocacy groups felt that the current rules better protected recipients, particularly the working poor, and recommended that a number of the current regulatory provisions be retained, including the requirement that the household be given at least 10 days to provide verification, barring procedural denials of households that have not refused to cooperate, and requiring the State agency to reschedule the first missed interview.

We have considered the comments received carefully. In response to the comments, in recognition of the need to carefully balance State flexibility and recipient rights, and in recognition of the concerns about unexplained and excessive caseload drops, we decided to adopt certain proposed revisions, to keep some existing regulations, and to modify some of the proposed changes.

We are adopting the proposed changes to paragraph (b)(1) to eliminate the references to the model notice of expiration (NOE). FNS no longer has a model NOE so the reference is outdated. However, after due consideration of the comments we received about the importance of ensuring that recipients are aware of their rights and their responsibilities, we have decided not to adopt the proposal to delete the sentence encouraging State agencies to send the recertification form, interview appointment letter, and statement of required verification with the NOE. Although State agencies send out their notices and other correspondence consistent with their automated system and the options they choose on waiving interviews and scheduling appointments, the provision is not binding on State agencies. Further, it

codifies the Department's viewpoint that the interests of recipients are best served by providing all the pertinent information about recertification at one time. Paragraph 273.14(b)(1)(iii) has been modified to incorporate the requirement addressed elsewhere about advising households of their right to request a telephone interview.

We are adopting the revisions to paragraph (b)(2) concerning the requirements for the recertification form. There was general support by the State agencies for the proposed flexibility in design of recertification forms. There were no negative comments received about this flexibility.

We proposed requiring only one face-to-face interview yearly, regardless of the number of interim recertifications. However, the proposal did not eliminate the requirement for some type of interview for the interim recertifications. Some commenters felt that any interim interview was unnecessary and indicated that they believed that the requirement for an interview at interim recertifications within a 12 month period was eliminated in the proposed section 273.2(e). We agree with the commenters that one interview within a 12 month period is sufficient and have revised the rule accordingly to allow State agencies the option to require only one interview within a 12 month period. In order to ensure that households are aware of their options concerning interviews, we have revised paragraph (b)(3)(i) to provide the same protections incorporated into 7 CFR 273.2(e) relating to interviews.

One commenter questioned why there was a requirement to mail an application to the household to obtain its signature if a telephone interview was conducted. We have eliminated the proposed requirement in paragraph (b)(3)(i) to mail the application to the household in this instance because it is unnecessary. Paragraph (b)(2) already requires that each new application for recertification be signed and dated by the applicant household. Accordingly we are revising paragraph (b)(3)(i) as discussed above.

We are adopting the proposal to eliminate the requirement in paragraph (b)(3)(ii) to schedule the face-to-face interview at the same time the household receives a face-to-face interview for PA/GA purposes. PRWORA eliminated the requirement for a joint interview, and certification periods are no longer necessarily aligned.

We proposed to delete the first two sentences in paragraph (b)(3)(iii) concerning scheduling of interviews. These sentences provided: that the State agency may schedule an interview prior to the recertification application filing date, as long as the household was not denied for failure to attend such an interview; that the State agency schedule an interview on or after the date the application was filed if an interview was not previously scheduled; and that the State agency reschedule any missed interview scheduled prior to receipt of an application. We proposed to retain the requirement that the State agency schedule interviews so that the household has at least 10 days to provide the required verification before the certification period expires. One State agency opposed keeping the requirement to schedule interviews so that the household has at least 10 days to provide the required verification before the certification period expires because the provision is unworkable if the household files an application very shortly before the certification period closes. An advocacy group recommended that the rule provide safeguards for scheduling and rescheduling of office interviews, including requiring State agencies to reschedule a missed first interview for working households. We believe that flexibility has been provided to State agencies in scheduling interviews for recertification in those instances where face-to-face interviews are being required. Households are considered to have timely applied if they apply by the 15th day of the last month of the certification period. State agencies should schedule interviews such that households that timely reapply are recertified by the end of their certification period in accordance with 7 CFR 273.14(d)(2). State agencies are not currently required to reschedule a missed first interview for recertification unless a household requests a new interview. We are not establishing a requirement to do so in this rule. If a household requests that an interview be rescheduled, the State agency is required to schedule a second interview. A clarification stating this has been added to paragraph (b)(3)(iii). Also, consistent with 7 CFR 273.2, we have added a sentence to paragraph (b)(3)(iii) to require that the State agency send any household that misses its scheduled interview a Notice of Missed Interview. For recertification interviews the Notice of Missed Interview may be combined with the notice of denial.

We proposed to remove the requirements in paragraph (b)(4) regarding the notice of required verification and clarify that benefits cannot be prorated if the time period for providing verification extended beyond the end of the certification period. An advocacy group recommended that we maintain the current provisions of 7 CFR 273.14(b)(4) in order to ensure there were no unnecessary procedural denials. We agree with the commenter that there may be confusion that could result in inappropriate denials, and therefore, have decided not to adopt the proposed removal of the first two sentences. We are adding the clarification that benefits cannot be prorated if the time period for providing verification extended beyond the end of the certification period.

We proposed to revise and simplify the language in paragraph (e) regarding delays in application processing but retain the current State agency options. Both State agencies and advocates commented on the revision. States approved of the flexibility but were confused about some of the meaning. The advocates felt that the revisions were overly harsh and could result in inappropriate denials. In response to the comments received, we have revised paragraph (e) to provide recipients protection from inappropriate denials, intrusive interviews, and excessive verification requirements, while continuing to provide State agencies with flexibility in administration of its recertification process. If a household files an application by the end of its certification period, attends any required interview, and submits any required verification timely, the household shall be recertified and its benefits shall not be prorated. If the household reapplies before the end of its certification period, but does not attend a required interview and does not request that it be rescheduled and then attend the rescheduled interview, or does not provide any required verification timely, the household may be denied at the time of the failure, at the end of the certification period, or at the end of 30 days. If the State agency opts to deny a case at the time of the failure, and the household completes the missing requirements prior to the end of its certification period, the case shall be reopened and benefits shall be provided for the full month. If the household complies with the missing requirements after the end of its certification period, the State agency shall determine whether the fault for the delay was the household's or the State agency's. If the delay was the fault of the household, benefits shall be prorated from the date of compliance. If the State agency was at fault, benefits shall be provided for the full month. If the

household applies within 30 days after the end of its certification period, its application would be treated as an application for recertification; however benefits would be prorated from the date of the application. Further, we have added to paragraph (e)(1) and (2) a sentence stating that the procedures in 7 CFR 273.2(h)(1) on determining cause of delays in processing of initial applications also apply to delays in processing applications for recertification. Finally, we are also adding a requirement in paragraph (e)(3) that provides that if a household's application for recertification is delayed beyond the first of the month of what would have been its new certification period thorough the fault of the State agency, the household's benefits for the new certification period shall be prorated based on the date of the new application; however, the State agency shall also provide restored benefits to the household back to the date the household's certification period should have begun had the State agency not erred and the household been able to apply timely.

Fair Hearings—7 CFR 273.15

Under section 11(e)(10) of the Act (7 U.S.C. 2020(e)(10)) and the current rules at 7 CFR 273.15(a), the State agency must provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program. Until the enactment of PRWORA, current rules at 7 CFR 273.15(j) did not allow the State agency to accept an oral withdrawal of a fair hearing request from a household. Under 7 CFR 273.15(j), State agencies are required to accept only written withdrawals of fair hearing requests from the household or the household's representative (*e.g.,* authorized representative).

Section 839 of PRWORA amended section 11(e)(10) of the Act to provide State agencies with the option of accepting an oral withdrawal of the fair hearing request from the household. However, if the withdrawal request is an oral request, section 839 requires the State agency to provide a written notice to the household confirming the withdrawal and providing the households with an opportunity to request a hearing. To implement section 839 of PRWORA, the proposed rule would amend 7 CFR 273.15(j) to allow a State agency the option of accepting an oral request to withdraw a fair hearing from the household, which would be followed by the State's written confirmation of the withdrawal and an offer of a hearing opportunity.

Numerous comments were received on this proposal. The majority of comments were from legal aid organizations and advocacy groups which strongly opposed the PRWORA provision permitting State agencies the option to accept oral withdrawals from households. The comments from these groups are discussed in more detail in the following paragraphs. A few State agencies provided comments that, in general, support the option provided by PRWORA to States.

Legal aid organizations and advocacy groups requested that either the proposal be withdrawn or that the Department include additional protections to ensure households are properly notified of their right to a fair hearing. Many of the these commenters recommended that the final rules prohibit State agencies from soliciting or suggesting oral withdrawals of hearing requests. Legal aid organizations and advocacy groups also recommended that the required notice from the State agency to the household confirming its oral withdrawal should allow the household to reinstate the hearing request within 10 days of receipt of the notice.

Under current rules at 7 CFR 273.15(c)(1), within 60 days of receipt of a request, the State agency must assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. If the household advises the State agency that its oral withdrawal was incorrect and that it in fact wants the fair hearing process to continue (*i.e.,* be reinstated), legal aid organizations and advocacy groups suggested that State agencies be given a modest amount of time, in addition to the original 60 day time frame, to schedule, conduct and render a decision. Therefore, rather than allowing the State agency an additional 60 days from the date the State agency receives notice from the household to continue the fair hearing, commenters recommend that the initial 60 day time frame (*i.e.,* the date of the household's original request) be extended by the time between the date the State agency sent the confirming notice and the time it received the request from the household, or its representative, for reinstatement of the fair hearing. For instance, assume a household receives a NOAA on May 1 and submits the request for a fair hearing May 5. By May 15th, the State agency and household agree that there is no basis for a fair hearing. The household member advises the State agency verbally of his or her desire to withdraw the hearing request. On May 20th, the State agency sends the household a Notice, as required in this final rule, advising the household of its requested withdrawal and of its right to request a hearing. On May 26th, the household returns a notice to its caseworker explaining that it still wants the fair hearing. The State agency receives the household's request on May 30, ten days from the date it sent the household the notice. As proposed by the commenters, the initial 60-day time frame, which, in this example would be until July 1, would be extended by 10 days, until July 10. The legal aid organizations and advocacy groups argue that without these revised time frames, some households would lose their right to continued benefits.

As specified under 7 CFR 273.15(g), a household shall be allowed to request a hearing on any action by the State agency, including loss of benefits, which occurred in the prior 90 days. Under 7 CFR 273.15(k), a State agency must allow a household to continue to participate in the FSP and receive continued benefits at the level of benefits being provided to the household prior to the NOAA, when the household requests a fair hearing within the period provided by the NOAA, usually 10 days. Continued benefits must be provided unless the household's certification period has expired or the continued benefits are not allowed as specified under 7 CFR 273.15(k)(2). Continued benefits are not provided when the State agency's adverse action was a termination of the household's participation, even though the State agency must provide a fair hearing of this action if requested by the household.

Finally, some legal aid and advocacy groups objected to allowing the State agency to accept an oral withdrawal from the household's authorized representative. To be consistent with current rules at 7 CFR 273.15, the Department proposed to allow a household's authorized representative to make the oral withdrawal.

The Department concurs that more guidance is necessary to ensure that, in State agencies electing to accept an oral withdrawal of their request to a fair hearing, households are properly informed of their rights and the procedures for reinstating a fair hearing if the household believes the State agency misinterpreted its oral statement or if the household reverses its decision. The Department further agrees that certain time frames must be identified to ensure State agencies process fair hearings in a timely manner. At the same time, the Department is interested in providing State agencies with flexibility to better administer the

Program without excessive or burdensome requirements.

Accordingly, the Department is amending its proposal at section 273.15 to include the following. First, the Department is amending its proposal at section 273.15(j)(2) to specify that a State agency may notify the household, or its representative, about the option of orally withdrawing the fair hearing request when the State agency and household reach agreement about issues related to the fair hearing request. However, the final rule at section 273.15(j)(2) explicitly prohibits the State agency from coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request. While we are aware that this provision duplicates current law prohibiting State agencies from denying a household of its right to a fair hearing, we believe that an explicit statement in the fair hearing section of Program regulations is appropriate and necessary.

Second, the final rule amends section 273.15(j)(2) to specify that State agencies electing to accept an oral expression from the household or its representative to withdraw a fair hearing must provide written confirmation notice to the household within 10 days of receiving the request for withdrawal as per the request of commenters.

Third, 7 CFR 273.15(j)(2) is amended in this final rule to specify that the written notice must also advise the household, or its representative, that it must notify the State agency within 10 days of receiving the State agency's confirming notice if it wishes to continue with the fair hearing process. The Department is establishing this time frame to ensure that households are aware of what action must be taken and to be consistent with other programmatic time frames provided to households.

Fourth, should a household advise the State agency that it wishes to reinstate its initial request for a fair hearing, the Department is specifying at section 273.15(j)(2) that, as required under 7 CFR 273.15(c)(1) or (2), the State agency must complete the fair hearing process within 60 days, or 45 days, as appropriate, of receiving notice from the household that it wishes to continue the fair hearing. The Department is not structuring the time frame for completing the hearing process in the manner suggested by commenters because the time frame may not provide State agencies with sufficient time to process and render a complete hearing decision. State agencies, at their option, may establish time frames designed to expedite the fair hearing process as proposed by commenters, but they are not required to do so.

Fifth, to ensure that the household's rights to continued benefits are not adversely affected, the Department is amending section 273.15(k)(2) to clarify that, once continued or reinstated, benefits must be continued until the expiration of the 10-day period for advising the State agency that it wishes to continue with the fair hearing. Thus, unless the household is not eligible to receive continued benefits or if continued benefits are terminated for another reason specified under 7 CFR 273.15(k)(2), the household is assured of continued benefits until all opportunity for a fair hearing has been given to the household, or its representative.

Finally, the Department is including an additional amendment at section 273.15(j)(2) to clarify that the household has one opportunity to request a reinstatement of a fair hearing after the household withdraws its request orally. The Department believes that one reinstatement assures the household its right to a fair hearing while preventing prolonged administrative actions. The Department wishes to clarify that this requirement in no way prohibits the household from requesting a fair hearing over an adverse action unrelated to the reinstated fair hearing. State agencies are encouraged to design notices which clearly advise the household of its right to a fair hearing whenever it believes it is aggrieved by an action of the State agency.

The Department is not taking action in response to commenters who expressed concern about the State agency accepting an oral withdrawal of a fair hearing from a household representative. The Department proposed this amendment to establish consistent procedures between State agencies accepting either written or oral withdrawal of a fair hearing request and current rules under which State agencies may accept written requests to withdraw the household's fair hearing request. An authorized representative is chosen by the household to assist the household in matters related to the household's participation in the FSP. Commenters did not offer compelling justification to exclude the authorized representative, who otherwise speaks for the household in all FSP-related matters, from this particular action. Furthermore, should the household disagree with its representative's oral request to withdraw the fair hearing, it is assured the opportunity to reinstate the request. Thus, the Department is adopting the proposed provision allowing the household's representative to orally withdraw the household's request in this final rule.

Simplified Food Stamp Program—7 CFR 273.25

In writing the proposed rule, the Department limited the regulations to those areas of the statute where the Department has explicit authority to establish rules for the operation of a Simplified Food Stamp Program (SFSP) or where clarification is needed. Since the purpose of an SFSP is to simplify the administration of the Food Stamp Program for States while maintaining the nutritional safety net for applicants or recipients, the Department chose not to regulate many features of the SFSP so that States would have the flexibility to design programs that best serve their particular needs and the needs of the low-income families they are serving. The Department intends to maintain these goals in final regulations.

One hundred and eighteen (118) organizations commented on the proposed regulations for the SFSP.

1. Clarification of Households Eligible To Participate in an SFSP

Approximately one third of the commenters suggested that final regulations should make it clear that participation in the SFSP is limited to households in which at least one member is receiving ''assistance'' under a program funded through the Temporary Assistance for Needy Families (TANF) grant to distinguish such households from those who are receiving other benefits not categorized as assistance. As the statute specifically restricts participation in an SFSP to households receiving ''assistance'' under a TANF program, the final rule clarifies this point by adding the term ''assistance'' to the definition section with a cross-reference to the definition of assistance as provided in TANF regulations at 45 CFR 260.31. Unless a form of support to a household qualifies as ''assistance'' under the TANF program, the household is not eligible to participate in an SFSP.

Approximately one-third of the commenters suggested the Department clarify that the SFSP is applicable only to those households in which a member is receiving TANF assistance and not to households that are jointly applying for TANF assistance and food stamps. Consequently, State agencies cannot use the SFSP to lengthen application processing time frames for these households. As legislation governing the SFSP restricts participation to those households with members receiving TANF assistance, the final rule adds a new paragraph (c) to clarify that State

agencies must use regular Food Stamp Program procedures when a household applies for benefits under the SFSP and is not authorized to receive TANF assistance.

2. Restrictions on Eligibility

Approximately one-third of the commenters suggested the final rule should clarify that the SFSP cannot import new restrictions on eligibility from its TANF program such as the family cap policies that make certain household members ineligible for benefits or policies that prevent a family from qualifying for cash assistance. The Department believes the statute sufficiently addresses these situations; consequently, regulatory clarification is not necessary. Legislation governing SFSP operations at 7 U.S.C. 2035(f)(3)(B) stipulates that the value of food stamp allotments issued under a simplified program must be based on the Thrifty Food Plan (TFP) reduced by 30 percent of net income. As the TFP is based on household size, the Department would not allow a State to reduce the size of a household under the SFSP through a family cap or other similar policies. In addition, the legislation requires a household to be receiving TANF assistance to be eligible to participate in the SFSP. If a State agency determines that a household is ineligible for TANF assistance, the household would not be able to participate in an SFSP and could not be subject to SFSP rules. State agencies would use regular FSP rules and procedures to determine eligibility for such households. In situations where an individual member of the household is ineligible for TANF, the household is considered a mixed-household and subject, therefore, to the limit on benefit reductions for these households.

3. Households With High Shelter Costs

Approximately one-third of the commenters suggested the final rule set minimum standards for preserving the effect of the excess shelter deduction. Legislation governing the SFSP at 7 U.S.C. 2020(e)(25)(B) stipulates that State plans for operating SFSPs must ''address the needs of households that experience high shelter costs in relation to the incomes of the households''. Neither the legislative history nor the statute itself provides further direction in the application of this requirement. The Department anticipates that States can achieve the legislative mandate in numerous ways; therefore, it is not appropriate for the Department to regulate this provision. To meet the statutory requirements, a State could use, for example, multiple standards for households with high, medium, low and no shelter costs or a standard for households residing in public housing and another for non-public housing. Since the legislation specifically requires differential treatment for households with high shelter costs versus those with low shelter costs, the Department would not allow a State to use a single standard based on average shelter costs for all households participating in an SFSP. The final rule adds a new paragraph (d) to clarify limitations on the use of standards for shelter costs.

4. Opportunity for Public Comment

The majority of comments addressed the need for public input on proposed SFSPs prior to the Department's approval. 101 of the 118 organizations commenting on the proposed SFSP regulation suggested that the Department allow the public an opportunity to comment on State SFSP plans prior to their approval either through a comment period or public hearings since simplified programs can fundamentally change the food stamp benefit calculation in ways unanticipated by legislation or regulations. Public input could improve the quality of State plans and increase the accountability of State officials submitting simplified proposals. In many States, changes to a State's Medicaid or cash assistance programs of the magnitude allowed under the SFSP would require public hearings or a notice and comment prior to implementation. Since the majority of commenters support a process for public input on proposed SFSP plans, the Department has decided to require that States provide a public comment period or hold public hearings or meetings with groups representing recipients' interests on their SFSP plans. The Department, however, will not regulate the process States must follow for public comments, hearings or meetings. The Department is requiring that a State solicit public opinion about its SFSP proposal—particularly the portion that deals with changes in rules that will affect benefits so that the public understands how cost neutrality requirements may result in benefit losses to finance other benefit increases. States are encouraged to consult with the Department prior to seeking public comments. While the Department is requiring a public comment period before final approval of its SFSP plan, the statute governing the SFSP requires the Department to approve plans for pure-TANF households so long as these plans comply with statutory requirements. The final rule adds a new paragraph (e) requiring that a State allow a period for the public to comment or hold public hearings or meetings with groups representing participants' interests on SFSP plans, and to submit a review of these comments with its final SFSP plan for Departmental approval.

5. Benefit Reductions for Mixed-TANF Households

A majority of commenters believe the operation of an SFSP for ''mixed'' households (in which at least one member, but not all members, receive assistance from a TANF funded program) should not result in a reduction of benefits for these households. One of the statutory requirements governing the simplified program mandates that operation of these programs must not increase Federal costs for any fiscal year (7 U.S.C. 2035(d)(2)(B)). A program that allows all participating households to receive more benefits than they are eligible for under the regular Food Stamp Program would increase costs to the Federal government and would, therefore, violate statutory requirements. States operating SFSPs are not able to meet the statutory provisions for cost containment unless the increases in benefits to some households are offset by decreases in benefits to other households.

While the Department does not have the authority to limit the amount of benefit loss for pure-TANF households, it does have discretion in this area with respect to mixed-TANF households. As discussed in the proposed rule and our interim guidance on this issue, the Department's primary concern is that mixed-TANF households do not lose nutritional support while participating in an SFSP. At the same time, we recognize that States need flexibility in program design to achieve simplification given the constraints of cost containment. To meet these objectives, FNS chose not to impose criteria for mixed-TANF households that are overly prescriptive and developed a single criterion that it believes will achieve the appropriate balance between these competing priorities. If a State's SFSP reduces benefits for mixed-TANF households, then no more than 5 percent of these participating households can have benefit reductions of 10 percent or more of the amount they are eligible to receive under the regular Food Stamp Program and no mixed-household can have benefit reductions of 25 percent or more of the amount they are eligible to receive under the regular Program

(commonly called the 5/10/25 percent benefit reduction requirement).

In developing the 5/10/25 percent benefit reduction requirement above, the Department recognized that small reductions in monthly allotments could result in changes exceeding this threshold. Consequently, the Department proposed to disregard benefit reductions of $10 or less from this requirement. Several commenters want to increase the amount of the benefit reduction from $10 to $25. The Department believes the $10 disregard maintains the appropriate balance between State flexibility and safeguarding the nutritional needs of participating households. Any reduction, regardless of how small, limits a household's access to a nutritious, healthy diet. Since benefit loss under a SFSP is permanent, unless the household becomes ineligible to participate in a SFSP or the SFSP is terminated, disregards above $10 could severely impact a household's ability to meet its nutritional needs. To prevent this, the Department plans to maintain the benefit reduction disregard at the $10 limit.

A commenter suggested that the Department substitute the 5/10/25 percent benefit reduction for a rule that would limit the reductions in benefits to mixed-TANF households by no greater percentage amount, and to no greater proportion of households, than it reduces benefits to pure-TANF households. Legislation governing the SFSP requires the Department to approve any State plan for the operation of an SFSP so long as the plan does not increase costs to the Federal government and it complies with the statutory requirements for operating such programs. The legislation further allows the Department to establish guidelines for the approval of mixed-TANF households, but not for pure-TANF households. As the legislation does not limit the amount that States can reduce benefits for pure-TANF households, States can reduce benefit amounts for these households by any amount. As previously discussed, the Department chose to use its discretionary authority to ensure that mixed-TANF households do not experience a reduction in benefits severe enough to endanger their ability to meet their nutritional needs. Therefore, the Department has decided to adopt the 5/10/25 rule as final.

Several commenters want to simplify the benefit loss methodology by using a single measurement or allow States more flexibility in deciding the mechanism for achieving the desired results. The Department believes using a standard with incremental limits on the amount that States can reduce provides States with greater flexibility in program design than does a methodology with a single standard. At the same time, this methodology ensures protection of the nutritional safety-net for households. In addition, a national standard applied across all States ensures equitable treatment for households participating in SFSPs.

A few commenters said the proposed benefit loss methodology is too complex. FNS should provide actual methodologies to measure benefit reduction of mixed-TANF households. The Department believes that regulating a specific methodology for measuring benefit loss for mixed-TANF households is contrary to the goals of simplification and would result in less flexibility for States. Rather than regulating what measurement systems States should use, FNS will work with States on an individual basis to design a measurement system that fits the scope of individual programs.

6. Conforming Language Regarding Benefit Reductions for Pure-TANF Households Participating in an SFSP

The proposed rule described guidelines for reduction of benefits for mixed-TANF households. Conforming language containing guidelines for reduction of benefits for pure-TANF households should be included in the final rule. As previously discussed, legislation governing the SFSP requires the Department to approve State plans for pure-TANF households so long as it complies with statutory requirements and does not increase costs for the Federal government. Since the legislation does not establish limits on the amount of benefit loss for pure-TANF households, the Department would exceed its authority if it implemented conforming guidelines regarding benefit reductions for pure-TANF households.

7. Other

Several commenters suggested States should be given authority to develop SFSPs that serve local needs without being constrained by rigid and arbitrary requirements. FNS should review SFSP applications on a case-by-case basis with minimal advance restriction and should give great deference to a State's efforts to fulfill the simplification objectives of the law. The Department believes the proposed rule provides States with flexibility in designing SFSPs that fit their individual administrative needs while preserving the nutritional safety net for participating households. To ensure flexibility, the Department limited the regulations to those areas of the statute where regulatory standards are essential to ensure that simplified programs fulfill the mission of the FSP. The Food and Nutrition Service reviews State plans for operating SFSPs on a case-by-case basis and approves all plans complying with requirements.

Issuance and Use of Coupons—Mail Issuance 7 CFR 274.2

Prior to the enactment of PRWORA, section 11(e)(25) of the Act (7 U.S.C. 2020(e)(25)) required State agencies to issue food stamp benefits through a mail issuance system in rural areas where households generally experience transportation difficulties in obtaining benefits. Section 835 of PRWROA deleted direct-mail issuance requirements.

Current rules at 7 CFR 274.2(g) specify the requirements that State agencies must meet in determining the rural areas in need of mail issuance. The current regulations at 7 CFR 272.2(g) also require State agencies to submit an attachment to the State Plan of Operation describing mail issuance requirements.

To implement this provision, the Department proposed to remove the mandatory mail issuance requirements and State plan requirements at 7 CFR 274.2(g)(1) and (g)(2) and 7 CFR 272.2(d)(1)(xi). However, to ensure fair and timely issuance to rural households, the proposed rule retained basic provisions at 7 CFR 274.2(g) requiring State agencies to issue food stamp benefits through a direct mail issuance system in rural areas where households experience transportation difficulties in obtaining benefits. These provisions would apply unless an EBT system is in place. In areas where direct mail issuance would continue, the State agency would determine if any households or geographic areas would be granted an exception. These exceptions would be reported to FNS as required at 7 CFR 272.3(a)(2) and (b)(2). These sections require State agencies to prepare and provide staff with operating guidelines and to submit their operating guidelines to FNS.

The Department did not receive comments on its mail issuance proposal. Thus, we are adopting the proposed rules at 7 CFR 272.2(d)(1)(xi) and 7 CFR 274.2(g) in this final rule without change.

Part 277—Payments of Certain Administrative Costs of State Agencies

Section 11(e)(1) of the Food Stamp Act and the regulations at 7 CFR 272.5(c) allow State agencies, at their option, to conduct activities designed to

inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the FSP. States electing to conduct Program informational activities must submit a State plan for FNS approval as specified in the current rule at 7 CFR 272.2(d)(1)(ix). State agencies with approval from FNS are reimbursed at the standard 50 percent rate under section 16(a) of the Food Stamp Act (7 U.S.C. 2025(a)) and 7 CFR Part 277 of the corresponding regulations.

Section 847 of PRWORA amended section 16(a)(4) of the Food Stamp Act to specify that Federal reimbursement funding not include ''recruitment activities.'' To implement section 847, the Department proposed to amend 7 CFR 277.4(b) to prohibit Federal reimbursement for recruitment activities. State agencies could continue to seek reimbursement from FNS for Program informational and educational activities if they provide a plan to FNS as specified at 7 CFR 272.2(d)(1)(ix). The Department also requested comments about the usefulness of this plan and ideas about how to make the plan approval process more efficient.

Very few comments were received in response to this proposal. One commenter suggested that the final rule should include a simple, narrow definition of ''recruitment'' to eliminate confusion that may arise during the review and approval of a State agency's Outreach Plan. The commenter suggested the definition for recruitment as, ''activities designed to persuade an individual who has made an informed choice not to apply for food stamps to change his or her decision and apply.'' The Department is adopting this suggested definition in this final rule because it is consistent with the policy FNS has applied when approving State plans for conducting Program informational activities. The Department intends to encourage and support State outreach activities that inform and encourage potentially eligible households to apply for food stamp benefits without improperly recruiting applicants.

Accordingly, the Department is amending section 277.4 in this final rule to define recruitment activities.

Implementation

The greater part of the final rule is effective on January 20, 2001, 60 days after the date of publication; however, there are some exemptions. At 7 CFR 273.2(b)(4)(iv), the final rule is amending a provision of another final rule which is not yet effective. The final rule ''Food Stamp Program: Recipient Claim Establishment and Collection Standards'' published on July 6, 2000 (65 FR 41752) is not effective until August 1, 2001. Accordingly, the amendment to § 273.2(b)(2)(iv) in this final rule is effective August 1, 2001. Moreover, the final rule contains a group of amendments which are not effective until OMB approves the associated information collection burden. The paragraphs affected are: § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); § 273.12(c)(3); and § 273.12(f)(4). FNS will publish a document in the **Federal Register** announcing the effective date of these amendments after approval of the information collection requirements by OMB.

The final rule incorporates at 7 CFR 272.1(g), the implementation dates as follows. State agencies may implement the following amendments at their discretion at any time on or after the effective date: § 272.8; § 272.11(a); § 273.2(f)(10); § 273.2(j)(2)(ii); § 273.9(d)(6)(i); § 273.9(d)(6)(iii)(E); § 273.11(a)(3)(v); § 273.12(a)(1)(vii); § 273.25; and § 277.4(b). State agencies may implement the amendment to § 273.12(f)(4) at their discretion at any time after the effective date established by OMB approval of the associated information collection burden. State agencies must implement the amendments to § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3) no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date. State agencies must implement all remaining amendments no later than June 1, 2001, for all households newly applying for Program benefits.

State agencies must convert current caseloads no later than the next recertification following the implementation date. Any variances would be excluded from quality control analysis in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A). The final rule allow a second variance exclusion period under 7 CFR 275.12(d)(2)(vii) for States which first implement option 1 under 7 CFR 273.11(c)(3)(ii), and then decide at a later date to implement option 2.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs, Social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income, Wages.

7 CFR Part 274

Food stamps, Fraud, Grant programs, Social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

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

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

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

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, add paragraph (g)(161) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(161) *Amendment No. 388* The provisions of Amendment No. 388 are implemented as follows:

(i) State agencies may implement the following amendments at their discretion at any time on or after the effective date: § 272.8; § 272.11(a); § 273.2(f)(9)(i); § 273.2(f)(10); § 273.2(j)(2)(ii); § 273.9(d)(6)(i); § 273.9(d)(6)(iii)(E); § 273.11(a)(3)(v); § 273.12(a)(1)(vii); § 273.25; and § 277.4(b).

(ii) State agencies may implement the following amendment at their discretion at any time after the effective date established by OMB approval of the associated information collection burden: § 273.12(f)(4).

(iii) State agencies must implement the following amendments no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits: § 273.2(c)(2)(i), § 273.2(e)(1),

§ 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3). State agencies must convert current caseloads no later than the next recertification following the implementation date.

(iv) State agencies must implement the amendment to § 273.2(b)(4)(iv) no later than August 1, 2001, for all households newly applying for Program benefits.

(v) State agencies must implement all remaining amendments no later than June 1, 2001, for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date.

(vi) Acting under policy guidance the Department issued previous to the publication of this final rule, several State agencies that have identified programs to confer categorical eligibility for food stamps that do not meet the criteria established at §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B) of this chapter. Any such State agency may continue to use these programs to confer categorical eligibility for food stamp purposes until September 30, 2001.

(vii) A State agency which first implements option 1 under 7 CFR 273.11(c)(3)(ii), and then decides at a later date to implement option 2 under that same paragraph is entitled to a second variance exclusion period under 7 CFR 275.12(d)(2)(vii).

* * * * *

§ 272.2 [Amended]

3. In § 272.2:

a. Paragraph (a)(2) is amended by removing the thirteenth sentence; and

b. Paragraph (d)(1)(xi) is removed and reserved.

4. In § 272.4:

a. Paragraph (d) is removed.

b. Paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), and (g) respectively; and

c. Newly redesignated paragraph (f) is revised to read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(f) *Hours of operation.* State agencies are responsible for setting the hours of operation for their food stamp offices. In doing so, State agencies must take into account the special needs of the populations they serve including households containing a working person.

* * * * *

5. In § 272.5:

a. Paragraph (b)(1)(i) is redesignated as the text of (b)(1) and is revised;

b. Paragraphs (b)(1)(ii) and (b)(1)(iii) are removed;

c. Paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively; and

d. Paragraph (b)(1)(iv) is redesignated as paragraph (b)(2).

The revision reads as follows:

§ 272.5 Program informational activities.

* * * * *

(b) * * *

(1) *Nutrition information.* FNS must encourage State agencies to develop Nutrition Education Plans as specified at § 272.2(d)(2) to inform applicant and participant households about the importance of a nutritious diet and the relationship between diet and health.

* * * * *

6. Section 272.8 is revised to read as follows:

§ 272.8 State income and eligibility verification system.

(a) *General.* (1) State agencies may maintain and use an income and eligibility verification system (IEVS), as specified in this section. By means of the IEVS, State agencies may request wage and benefit information from the agencies identified in this paragraph (a)(1) and use that information in verifying eligibility for and the amount of food stamp benefits due to eligible households. Such information may be requested and used with respect to all household members, including any considered excluded household members as specified in § 273.11(c) of this chapter whenever the SSNs of such excluded household members are available to the State agency. If not otherwise documented, State agencies must obtain written agreements from these information provider agencies affirming that they must not record any information about individual food stamp households and that staff in those agencies are subject to the disclosure restrictions of the information provider agencies and § 272.1(c). The information provider agencies, at a minimum, are:

(i) The State Wage Information Collection Agency (SWICA) which maintains wage information;

(ii) The Social Security Administration (SSA) which maintains information about net earnings from self-employment, wages, and payments of retirement income, which is available pursuant to section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code; and information which is available from SSA regarding Federal retirement, and survivors, disability, SSI and related benefits;

(iii) The IRS from which unearned income information is available pursuant to section 6103(1)(7)(B) of the IRS Code; and

(iv) The agency administering Unemployment Insurance Benefits (UIB) which maintains claim information and any information in addition to information about wages and UIB available from the agency which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(2) State agencies may exchange with State agencies administering certain other programs in the IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefit amounts under the Food Stamp Program and those programs. State agencies may exchange such information with these agencies in other States when they determine that the same objectives are likely to be met. These programs are:

(i) Temporary Assistance for Needy Families;

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under title I, X, or XIV (the adult categories), or title XVI of the Social Security Act.

(3) State agencies must provide information to those administering the Child Support Program (title IV–D of the Social Security Act) and titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(4) Prior to requesting or exchanging information with other agencies, State agencies must execute data exchange agreements with those agencies. The agreements must specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements are not part of the State agency's Plan of Operation.

(b) *Alternate data sources.* A State agency may continue to use income information from an alternate source or sources to meet any requirement under paragraph (a) of this section.

(c) *Actions on recipient households.* (1) State agency action on information items about recipient households shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral

contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2 (f)(9)(iii) and (f)(9)(iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, notices of adverse action.

(2) State agencies must initiate and pursue the actions on recipient households specified in paragraph (c)(1) of this section so that the actions are completed within 45 days of receipt of the information items. Actions may be completed later than 45 days from the receipt of information if:

(i) The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 of this chapter when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraph (c)(1) of this section substantiate an overissuance, State agencies must establish and take actions on claims as specified in § 273.18 of this chapter.

(4) State agencies must use appropriate procedures to monitor the timeliness requirements in paragraph (c)(2) of this section.

(5) Except for the claims actions specified in paragraph (c)(3) of this section, State agencies may exclude from the actions required in paragraph (c) of this section information items pertaining to household members who are participating in one of the other programs listed in paragraph (a)(2) of this section.

(d) *IEVS information and quality control.* The requirements of this section do not relieve the State agency of its responsibility for determining erroneous payments and/or its liability for such payments as specified in part 275 of this chapter (which pertains to quality control) and in guidelines on quality control established under that part.

(e) *Documentation.* The State agency must document, as required by § 273.2(f)(6) of this chapter, information obtained through the IEVS both when an adverse action is and is not instituted.

§ 272.11 [Amended]

7. In 272.11:

a. Paragraph (a) is amended by removing the word, ''shall'' and adding the word ''may'' in its place;

b. Paragraphs (b)(2)(iii), (b)(2)(iv), and (d) are revised; and

c. Paragraph (e)(2) is removed, and paragraph (e)(1) is redesignated as the text of paragraph (e).

The revisions read as follows:

§ 272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

* * * * *

(b) * * *

(2) * * *

(iii) For automated SAVE verification through access to the Alien Status Verification Index (ASVI), a description of the access method and procedures;

(iv) For secondary verification as described in paragraph (d) of this section, the locations of INS District Offices to which verification requests will be directed;

* * * * *

(d) *Method of verification.* The State agency may verify the documentation presented by an alien applicant by completing INS Form G–845 and submitting photocopies of such documentation to the INS for verification as described in § 273.2(f)(10) of this chapter. In States that participate in SAVE, the State agency must use this secondary verification procedure whenever the applicant-individual's documented alien status has not been verified through automated access to the ASVI or significant discrepancies exist between the data on the ASVI and the information provided by the alien applicant.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

8. In § 273.1, paragraph (f) is removed.

9. In § 273.2:

a. The section heading is revised, and paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised.

b. Paragraph (b)(4)(iv), added at 65 FR 41775 on July 6, 2000, and effective August 1, 2001, is revised.

c. Paragraph (c)(1) is amended by revising the first sentence and by adding four new sentences after the first sentence.

d. Paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) are revised.

e. Paragraph (d)(1) is amended by revising the fifth sentence.

f. Paragraph (e), paragraph (f) introductory text and paragraph (f)(1)(ii) are revised.

g. Paragraph (f)(1)(xi) is removed, and paragraphs (f)(1)(xii) and (f)(1)(xiii) are redesignated as paragraphs (f)(1)(xi) and (f)(1)(xii), respectively.

h. Paragraph (f)(2)(ii) is revised.

i. Paragraph (f)(2)(iii) is added.

j. Paragraphs (f)(4)(ii), (f)(4)(iii), and (f)(5)(i) are revised.

k. Paragraph (f)(5)(ii) is amended by adding the words ''in accordance with paragraph (f)(4) of this section'' after the word ''visit'' in the first sentence.

l. Paragraph (f)(9) heading and paragraph (f)(9)(i) are revised.

m. Paragraph (f)(10) heading and introductory text are revised.

n. Paragraph (g)(3) is amended by removing the words ''two scheduled interviews'' in the second sentence and adding in their place the words ''a scheduled interview.''

o. Paragraphs (h)(1)(i)(B) and (h)(1)(i)(D) are revised.

p. Paragraph (i)(4)(i) is amended by adding, in the third sentence of the undesignated text following paragraph (i)(4)(i)(B), the words ''applying for benefits'' after the word ''person'' both times it appears in that sentence.

q. Paragraph (j) introductory text, and paragraphs (j)(1)(i), (j)(1)(ii),(j)(1)(iii), and (j)(1)(v) are revised.

r. Paragraph (j)(1)(iv) is amended by adding the words '' in accordance with § 273.12(c)'' after the word ''eligible'' in the eighth sentence.

s. Paragraph (j)(2) is amended by revising paragraph (j)(2)(i), redesignating paragraphs (j)(2)(ii) through (j)(2)(vii) as (j)(2)(vi) through (j)(2)(xi), respectively, and adding new paragraphs (j)(2)(ii), (j)(2)(iii), (j)(2)(iv), and (j)(2)(v).

t. Newly redesignated paragraph (j)(2)(xi)(F) is removed.

u. Paragraph (j)(3)(i) is amended by removing the word ''shall'' in the first sentence and adding in its place the word ''may.''

v. Paragraph (j)(3)(iii) is removed.

w. Paragraph (j)(4)(iii)(C) is amended by removing the first sentence.

x. A new paragraph (n) is added.

The revisions and additions read as follows:

§ 273.2 Office operations and application processing.

(a) *Operation of food stamp offices and processing of applications*—(1) *Office operations.* State agencies must establish procedures governing the operation of food stamp offices that the State agency determines best serve households in the State, including households with special needs, such as, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, households with adult members who are not proficient in English, and households with earned income (working households). The State agency must provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program. The State agency cannot, as a

condition of eligibility, impose additional application or application processing requirements. The State agency must have a procedure for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities. The State agency must base food stamp eligibility solely on the criteria contained in the Act and this part.

(2) *Application processing.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency must act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. The State agency must make expedited service available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) * * * (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, including the information concerning citizenship and alien status of the members applying for benefits;

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

(v) In plain and prominent language on or near 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. Regardless of the type of system the State agency uses (paper or electronic), it must provide a means for households to immediately begin the application process with name, address and signature;

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

(vii) In plain and prominent language on or near the front page of the application, notification that benefits are provided from the date of application; and

(viii) The following nondiscrimination statement on the application itself even if the State agency uses a joint application form:

''In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability.

''To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.''; and

(ix) For multi-program applications, contain language which clearly affords applicants the option of answering only those questions relevant to the program or programs for which they are applying.

(2) *Income and eligibility verification system (IEVS).* If the State agency chooses to use IEVS in accordance with paragraph (f)(9) of this section, it must notify all applicants for food stamp benefits at the time of application and at each recertification through a written statement on or provided with the application form that information available through 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. The regulations at § 273.2(f)(4)(ii) govern the use of collateral contacts. The State agency must also notify all applicants on the application form that the alien status of applicant household members 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) *Jointly processed cases.* If a State agency has a procedure that allows applicants to apply for the food stamp program and another program at the same time, the State agency shall notify applicants that they may file a joint application for more than one program or they may file a separate application for food stamps independent of their application for benefits from any other program. All food stamp applications, regardless of whether they are joint applications or separate applications, must be processed for food stamp purposes in accordance with food stamp procedural, timeliness, notice, and fair hearing requirements. No household shall have its food stamp benefits denied solely on the basis that its application to participate in another program has been denied or its benefits under another program have been terminated without a separate determination by the State agency that the household failed to satisfy a food stamp eligibility requirement. Households that file a joint application for food stamps and another program and are denied benefits for the other program shall not be required to resubmit the joint application or to file another application for food stamps but shall have its food stamp eligibility determined based on the joint application in accordance with the food stamp processing time frames from the date the joint application was initially accepted by the State agency.

(4) * * *

(iv) Providing the requested information, including the SSN of each household member, is voluntary. However, failure to provide an SSN will result in the denial of food stamp benefits to each individual failing to provide an SSN. Any SSNs provided will be used and disclosed in the same manner as SSNs of eligible household members.

(c) * * * (1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application. The State agency must provide households that complete an on-line electronic application in person at the food stamp office the opportunity to review the information that has been recorded electronically and must provide them with a copy of that information for their records. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. State agencies must document the date the application was filed by recording the date of receipt at the food stamp office. When a resident of an institution is jointly applying for

SSI and food stamps prior to leaving the institution, the filing date of the application that the State agency must record is the date of release of the applicant from the institution. * * *

(2) * * *

(i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance or expresses concerns which indicate food insecurity. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting other requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day, or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded.

* * * * *

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form. Regardless of the type of system the State agency uses (paper or electronic), the State agency must provide a means for applicants to immediately begin the application process with name, address and signature.

* * * * *

(d) * * *

(1) * * * If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section. * * *

* * * * *

(e) *Interviews.* (1) Except for households certified for longer than 12 months, and except as provided in paragraph (e)(2) of this section, households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter. State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. Interviews may be conducted at the food stamp office or other mutually acceptable location, including a household's residence. If the interview will be conducted at the household's residence, it must be scheduled in advance with the household. If a household in which all adult members are elderly or disabled is certified for 24 months in accordance with § 273.10(f)(1), or a household residing on a reservation is required to submit monthly reports and is certified for 24 months in accordance with § 273.10(f)(2), a face-to-face interview is not required during the certification period. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer must not simply review the information that appears on the application, but must explore and resolve with the household unclear and incomplete information. The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. The interviewer must conduct the interview as an official and confidential discussion of household circumstances. The State agency must protect the applicant's right to privacy during the interview. Facilities must be adequate to preserve the privacy and confidentiality of the interview.

(2) The State agency must notify the applicant that it will waive the face-to-face interview required in paragraph (e)(1) of this section in favor of a telephone interview on a case-by-case basis because of household hardship situations as determined by the State agency. These hardship conditions include, but are not limited to: Illness, transportation difficulties, 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. The State agency must document the case file to show when a waiver was granted because of a hardship. The State agency may opt to waive the face-to-face interview in favor of a telephone interview for all households which have no earned income and all members of the household are elderly or disabled. Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household which requests one. The State agency has the option of conducting a telephone interview or a home visit that is scheduled in advance with the household if the office interview is waived.

(i) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where

documentary verification would normally be provided.

(ii) Waiver of the face-to-face interview may not affect the length of the household's certification period.

(3) The State agency must schedule an interview for all applicant households who are not interviewed on the day they submit their applications. To the extent practicable, the State agency must schedule the interview to accommodate the needs of groups with special circumstances, including working households. The State agency must schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. The State agency must notify each household that misses its interview appointment that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day application processing period, the State agency must schedule a second interview. The State agency may not deny a household's application prior to the 30th day after application if the household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, the State agency must issue prorated benefits from the date of application.

(f) *Verification.* Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification. Paragraph (i)(4) of this section contains verification procedures for expedited service cases.

(1) * * *

(ii) *Alien eligibility.* (A) The State agency must verify the eligible status of applicant aliens. If an alien does not wish the State agency to contact INS to verify his or her immigration status, the State agency must give the household the option of withdrawing its application or participating without that member. The Department of Justice (DOJ) Interim Guidance On Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Interim Guidance) (62 FR 61344, November 17, 1997) contains information on acceptable documents and INS codes. State agencies should use the Interim Guidance until DOJ publishes a final rule on this issue. Thereafter, State agencies should consult both the Interim Guidance and the DOJ final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the verification of alien eligibility. As provided in § 273.4, the following information may also be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was age 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. The State agency must also verify these factors, if applicable to the alien's eligibility. The SSA Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. However, the QCHS may not show all qualifying quarters. For instance, SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both these cases, the individual, rather than SSA, would need to provide the evidence needed to verify the quarters.

(B) An alien is ineligible until acceptable documentation is provided unless:

(*1*) The State agency has submitted a copy of a document provided by the household to INS for verification. Pending such verification, the State agency cannot delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status; or

(*2*) The applicant or the State agency has submitted a request to SSA for information regarding the number of quarters of work that can be credited to the individual, SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. If SSA indicates that the number of qualifying quarters that can be credited is under investigation, the State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

(*3*) The applicant or the State agency has submitted a request to a Federal agency for verification of information which bears on the individual's eligible alien status. The State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

(C) The State agency must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity must be at least 10 days from the date of the State agency's request for an acceptable document. When the State agency fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

* * * * *

(2) * * *

(ii) If a member's citizenship or status as a non-citizen national is questionable, the State agency must verify the member's citizenship or non-citizen national status in accordance with attachment 4 of the DOJ Interim Guidance. After DOJ issues final rules, State agencies should consult both the Interim Guidance and the final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the eligibility determination. The State agency must accept participation in another program as acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the household cannot obtain the forms of verification suggested in attachment 4 of the DOJ Interim Guidance and the household can provide a reasonable explanation as to why verification is not available, the State agency must accept a signed statement, under penalty of perjury, from a third party indicating a reasonable basis for personal knowledge that the member in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud. Absent verification or third party attestation of U.S. citizenship or non-citizen national status, the member whose citizenship or non-citizen national status is in question is ineligible to participate until

the issue is resolved. The member whose citizenship or non-citizen national status is in question will have his or her income and resources considered available to any remaining household members as set forth in § 273.11(c).

(iii) Homeless households claiming shelter expenses may provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people, for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

* * * * *

(4) * * *

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification. When talking with collateral contacts, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for food stamps, nor should they disclose any information supplied by the household, especially information that is protected by § 273.1(c), or suggest that the household is suspected of any wrong doing.

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household. Home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Simply because a household fits a profile of an error-prone household does not constitute lack of verification. State agencies shall assist households in obtaining sufficient verification in accordance with paragraph (c)(5) of this section.

* * * * *

(5) * * *

(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 must 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, by facsimile or other electronic device, or through an authorized representative. The State agency must not require the household to present verification in person at the food stamp office. The State agency must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

* * * * *

(9) *Optional use of IEVS.* (i) The State agency may obtain information through IEVS in accordance with procedures specified in § 272.8 of this chapter and use it to verify the eligibility and benefit levels of applicants and participating households.

* * * * *

(10) *Optional use of SAVE.* Households are required to submit documents to verify the immigration status of applicant aliens. State agencies that verify the validity of such documents through the INS SAVE system in accordance with § 272.11 of this chapter must use the following procedures:

* * * * *

(h) * * *

(1) * * *

(i) * * *

(B) If one or more members of the household have failed to register for work, as required in § 273.7, the State agency must have informed the household of the need to register for work, determined if the household members are exempt from work registration, and given the household at least 10 days from the date of notification to register these members.

* * * * *

(D) For households that have failed to appear for an interview, the State agency must notify the household that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day processing period, the State agency must schedule a second interview. If the household fails to schedule a second interview, or the subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

* * * * *

(j) *PA, GA and categorically eligible households.* The State agency must notify households applying for public assistance (PA) of their right to apply for food stamp benefits at the same time and must allow them to apply for food stamp benefits at the same time they apply for PA benefits. The State agency must also notify such households that time limits or other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. The State agency may process the applications of such households in accordance with the requirements of paragraph (j)(1) of this section, and the State agency must base their eligibility solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application form, households in which all members

are included in a State or local GA grant may have their application for food stamps included in the GA application form. State agencies may use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The State agency must base eligibility of jointly processed GA households solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. The State agency must base the benefit levels of all households solely on food stamp criteria. The State agency must certify jointly processed and categorically eligible households in accordance with food stamp procedural, timeliness, and notice requirements, including the 7-day expedited service provisions of paragraph (i) of this section and normal 30-day application processing standards of paragraph (g) of this section. Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, individuals are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Individuals entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. The State agency may not consider as recipients those individuals not receiving GA, PA, or SSI benefits who are entitled to Medicaid only.

(1) * * * (i) If a joint PA/food stamp application is used, the application may contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility must be contained in the PA form or must be an attachment to it. The joint PA/food stamp application must clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section.

(ii) The State agency may conduct a single interview at initial application for both public assistance and food stamp purposes. A household's eligibility for food stamp out-of-office interview provisions in paragraph (e)(2) of this section does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both PA and food stamps, the State agency must follow the verification procedures described in paragraphs (f)(1) through (f)(8) of this section for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, if the household has provided the State agency sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section, but has failed to provide sufficient verification to meet the PA verification rules, the State agency may not use such failure as a basis for denying the household's food stamp application or failing to comply with processing requirements of paragraph (g) of this section. Under these circumstances, the State agency must process the household's food stamp application and determine eligibility based on its compliance with the requirements of paragraphs (f)(1) through (f)(8) of this section.

* * * * *

(v) The State agency may not require households which file a joint PA/food stamp application and whose PA applications are denied to file new food stamp applications. Rather, the State agency must determine or continue their food stamp eligibility on the basis of the original applications filed jointly for PA and food stamp purposes. In addition, the State agency must use 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.

(2) * * *

(i) The following households are categorically eligible for food stamps unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps.

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive cash through a PA program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A;

(B) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to forward purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104–193.

(C) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L. 104–193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(D) Any household in which all members receive or are authorized to receive SSI benefits, except that 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), are not categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The State agency must consider the individuals categorically eligible at such time as SSA makes a final SSI eligibility and the institution has released the individual.

(E) Any household in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with paragraphs (j)(2)(i)(A) through (j)(2)(i)(D) of this section.

(ii) The State agency, at its option, may extend categorical eligibility to the following households only if doing so will further the purposes of the Food Stamp Act:

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104–193. States must inform FNS of the TANF services under this paragraph that they are determining to confer categorical eligibility.

(B) Subject to FNS approval, any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the

TANF block grant, as set forth in Section 401 of P.L 104–193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(iii) Any household in which one member receives or is authorized to receive benefits according to paragraphs (j)(2)(i)(B), (j)(2)(i)(C), (j)(2)(ii)(A) and (j)(2)(ii)(B), of this section and the State agency determines that the whole household benefits.

(iv) For purposes of paragraphs (j)(2)(i), (j)(2)(ii),and (j)(2)(iii) of this section, ''authorized to receive'' means that an individual has been determined eligible for benefits and has been notified of this determination, even if the benefits have been authorized but not received, authorized but not accessed, suspended or recouped, or not paid because they are less than a minimum amount.

(v) The eligibility factors which are deemed for food stamp eligibility without the verification required in paragraph (f) of this section because of PA/SSI status are the resource, gross and net income limits; social security number information, sponsored alien information, and residency. However, the State agency must collect and verify factors relating to benefit determination that are not collected and verified by the other program if these factors are required to be verified under paragraph (f) of this section. If any of the following factors are questionable, the State agency must verify, in accordance with paragraph (f) of this section, that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph (j) of this section;

(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)(vi) of this section.

* * * * *

(n) *Authorized representatives.* Representatives may be authorized to act on behalf of a household in the application process, in obtaining food stamp benefits, and in using food stamp benefits.

(1) *Application processing and reporting.* The State agency shall inform applicants and prospective applicants that indicate that they may have difficulty completing the application process, that a nonhousehold member may be designated as the authorized representative for application processing purposes. The household member or the authorized representative may complete work registration forms for those household members required to register for work. The authorized representative designated for application processing purposes may also carry out household responsibilities during the certification period, such as reporting changes in the household's income or other household circumstances in accordance with § 273.12(a) and § 273.21. Except for those situations in which a drug and alcohol treatment center or other group living arrangement acts as the authorized representative, the State agency must inform the household that the household will be held liable for any overissuance that results from erroneous information given by the authorized representative.

(i) A nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances and the authorized representative designation has been made in writing by the head of the household, the spouse, or another responsible member of the household. Paragraph (n)(4) of this section contains further restrictions on who can be designated an authorized representative.

(ii) Residents of drug or alcohol treatment centers must apply and be certified through the use of authorized representatives in accordance with § 273.11(e). Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives in accordance with § 273.11(f).

(2) *Obtaining food stamp benefits.* An authorized representative may be designated to obtain benefits. Even if the household is able to obtain benefits, it should be encouraged to name an authorized representative for obtaining benefits in case of illness or other circumstances which might result in an inability to obtain benefits. The name of the authorized representative must be recorded in the household's case record and on the food stamp identification (ID) card, as provided in § 274.10(a)(1) of this chapter. The authorized representative for obtaining benefits may or may not be the same individual designated as an authorized representative for the application process or for meeting reporting requirements during the certification period. The State agency must develop a system by which a household may designate an emergency authorized representative in accordance with § 274.10(c) of this chapter to obtain the household's benefits for a particular month.

(3) *Using benefits.* A household may allow any household member or nonmember to use its ID card and benefits to purchase food or meals, if authorized, for the household. Drug or alcohol treatment centers and group living arrangements which act as authorized representatives for residents of the facilities must use food stamp benefits for food prepared and served to those residents participating in the Food Stamp Program (except when residents leave the facility as provided in § 273.11(e) and (f)).

(4) *Restrictions on designations of authorized representatives.* (i) The State agency must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

(A) State agency employees who are involved in the certification or issuance processes and retailers who are authorized to accept food stamp benefits may not act as authorized representatives without the specific written approval of a designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(B) An individual disqualified for an intentional Program violation cannot act as an authorized representative during the disqualification period, unless the State agency has determined that no one else is available to serve as an authorized representative. The State agency must separately determine whether the individual is needed to apply on behalf of the household, or to obtain benefits on behalf of the household.

(C) If a State agency has determined that an authorized representative has knowingly provided false information about household circumstances or has made improper use of coupons, it may disqualify that person from being an authorized representative for up to one year. The State agency must send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the reason for the proposed action and the household's right to request a fair hearing. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes which act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living

arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households circumstances, may be prosecuted under applicable Federal and State statutes for their acts.

(D) Homeless meal providers, as defined in § 271.2 of this chapter, may not act as authorized representatives for homeless food stamp recipients.

(ii) In order to prevent abuse of the program, the State agency may set a limit on the number of households an authorized representative may represent.

(iii) In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, the State agency should exercise caution to assure that each household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, the household is receiving the correct amount of benefits and that the authorized representative is properly using the benefits.

10. § 273.4 is revised to read as follows:

§ 273.4 Citizenship and alien status.

(a) *Household members meeting citizenship or alien status requirements.* No person is eligible to participate in the Program unless that person is:

(1) A U.S. citizen [1];

(2) A U.S. non-citizen national [1]

(3) An individual who is:

(i) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(ii) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) An individual who is:

(i) Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(ii) The spouse, or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(iii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a full-time student under the age of 22; an unmarried child under the age of 18 or if a full time student under the age of 22 of such a deceased Hmong or Highland Laotian provided the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday. For purposes of this paragraph (a)(4)(iii), child means the legally adopted or biological child of the person described in paragraph (a)(4)(i) of this section, or

(5) An individual who is *both* a qualified alien as defined in paragraph (a)(5)(i) of this section and an eligible alien as defined in paragraph (a)(5)(ii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(F) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered [2]; or

(H) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(5)(i) of this section, must also be at least one of the following to be eligible to receive food stamps:

(A) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(*1*) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(*2*) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total.

(B) An alien admitted as a refugee under section 207 of the INA. Eligibility is limited to 7 years from the date of the alien's entry into the U.S.

(C) An alien granted asylum under section 208 of the INA. Eligibility is limited to 7 years from the date asylum was granted.

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under

[1] For guidance, see the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

[2] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published on November 17, 1997 (62 FR 61344).

section 241(b)(3) or the INA. Eligibility is limited to 7 years from the date deportation or removal was withheld.

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980). Eligibility is limited to 7 years from the date the status as a Cuban or Haitian entrant was granted.

(F) An Amerasian admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461. Eligibility is limited to 7 years from the date admitted as an Amerasian.

(G) An alien with one of the following military connections:

(*1*) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(*2*) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(*3*) The spouse and unmarried dependent children of a person described in paragraphs (a)(5)(ii)(G)(*1*) or (G)(*2*) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(5)(ii)(G)(*3*) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(5)(ii)(G)(*3*), child means the legally adopted or biological child of the person described in paragraph (a)(5)(ii)(G)(*1*) or (G)(*2*) of this section.

(H) An individual who on August 22, 1996, was lawfully residing in the U.S., and is now receiving benefits or assistance for blindness or disability (as specified in § 271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who on August 22, 1996, was lawfully residing in the U.S. and is now under 18 years of age.

(iii) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

(6) For purposes of determining eligible alien status in accordance with paragraphs (a)(4) and (a)(5)(ii)(H) through (a)(5)(ii)(J) of this section ''lawfully residing in the U.S.'' means that the alien is lawfully present as defined at 8 CFR 103.12(a).

(b) *Reporting illegal aliens.* (1) The State agency must inform the local INS office immediately whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the U.S. in violation of the INA. The State agency may meet this requirement by conforming with the Interagency Notice providing guidance for compliance with PRWORA section 404 published on September 28, 2000 (65 FR 58301).

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, the State agency must classify that member as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, the State agency must classify that person as an ineligible alien. In such cases the State agency must not continue efforts to obtain that documentation.

(c) *Households containing sponsored alien members*—(1) *Definition.* A sponsored alien is an alien for whom a person (the sponsor) has executed an affidavit of support (INS Form I–864 or I–864A) on behalf of the alien pursuant to section 213A of the INA.

(2) *Deeming of sponsor's income and resources.* For purposes of this paragraph (c)(2), only in the event a sponsored alien is an eligible alien in accordance with paragraph (a) of this section will the State agency consider available to the household the income and resources of the sponsor and spouse. For purposes of determining the eligibility and benefit level of a household of which an eligible sponsored alien is a member, the State agency must deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I–864 or I–864A, as the unearned income and resources of the sponsored alien. The State agency must deem the sponsor's income and resources until the alien gains U. S. citizenship, has worked or can receive credit for 40 qualifying quarters of work as described in paragraph (a)(5)(ii)(A) of this section, or the sponsor dies.

(i) The monthly income of the sponsor and sponsor's spouse (if he or she has executed INS Form I–864 or I–864A) deemed as that of the eligible sponsored alien must be the total monthly earned and unearned income, as defined in § 273.9(b) with the exclusions provided in § 273.9(c) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member applies or is recertified for participation, reduced by:

(A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse; and

(B) An amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(ii) If the alien has already reported gross income information on his or her sponsor in compliance with the sponsored alien rules of another State agency administered assistance program, the State agency may use that income amount for Food Stamp Program deeming purposes. However, the State agency must limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien to amounts specified in paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this section.

(iii) The State agency must consider as income to the alien any money the sponsor or the sponsor's spouse pays to the eligible sponsored alien, but only to the extent that the money exceeds the amount deemed to the eligible sponsored alien in accordance with paragraph (c)(2)(i) of this section.

(iv) The State agency must deem as available to the eligible sponsored alien the total amount of the resources of the sponsor and sponsor's spouse as determined in accordance with § 273.8, reduced by $1,500.

(v) If a sponsored alien can demonstrate to the State agency's satisfaction that his or her sponsor is the sponsor of other aliens, the State agency must divide the income and resources deemed under the provisions of paragraphs (c)(2)(i) and (c)(2)(iii) of this

section by the number of such sponsored aliens.

(3) *Exempt aliens.* The provisions of paragraph (c)(2) of this section do not apply to:

(i) An alien who is a member of his or her sponsor's food stamp household;

(ii) An alien who is sponsored by an organization or group as opposed to an individual;

(iii) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

(iv) An indigent alien that the State agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). For purposes of this paragraph (c)(3)(iv), the phrase "is unable to obtain food and shelter" means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size. The State agency must determine the amount of income and other assistance provided in the month of application. If the alien is indigent, the only amount that the State agency must deem to such an alien will be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewable for additional 12-month periods. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved;

(v) A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after the State agency determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer.[3] After 12 months, the State agency must not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the alien does not live with the batterer.

(4) *Eligible sponsored alien's responsibilities.* During the period the alien is subject to deeming, the eligible sponsored alien is responsible for obtaining the cooperation of the sponsor and for providing the State agency at the time of application and at the time of recertification with the information and documentation necessary to calculate deemed income and resources in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section. The eligible sponsored alien is responsible for providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support. The State agency must attribute the entire amount of income and resources to the applicant eligible sponsored alien until he or she provides the information specified under this paragraph (c)(4). The eligible sponsored alien is also responsible for reporting the required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period. The State agency must handle such changes in accordance with the timeliness standards described in § 273.12 or § 273.21, as appropriate.

(5) *Awaiting verification.* Until the alien provides information or verification necessary to carry out the provisions of paragraph (c)(2) of this section, the sponsored alien is ineligible. The State agency must determine the eligibility of any remaining household members. The State agency must consider available to the remaining household members the income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) in determining the eligibility and benefit level of the remaining household members in accordance with § 273.11(c). If the sponsored alien refuses to cooperate in providing information or verification, other adult members of the alien's household are responsible for providing the information or verification required in accordance with the provisions of § 273.2(d). If the State agency subsequently receives information or verification, it must act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The State agency must assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Demands for restitution.* The State agency must exclude any sponsor who is participating in the Program from any demand made under 8 CFR 213a.4(a) for the value of food stamp benefits issued to an eligible sponsored alien he or she sponsors.

11. In § 273.8:

a. A new paragraph (e)(3)(i)(G) is added.

b. Paragraphs (c)(3), (e)(17), (e)(18), and (f)(2) are revised.

The addition and revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(c) * * *

(3) For a household containing a sponsored alien, the State agency must deem the resources of the sponsor and the sponsor's spouse in accordance with § 273.4(c)(2).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(G) The value of the vehicle is inaccessible, in accordance with paragraph (e)(18) of this section, because its sale would produce an estimated return of not more than $1,500.

* * * * *

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. For purposes of this paragraph (e)(17), if an individual receives non-cash or in-kind services from a program specified in §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B), the State agency must determine whether the individual or the household benefits from the assistance provided, in accordance with § 273.2(j)(2)(iii). Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any

[3] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

(i) ''Significant return'' means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than $1,500; and

(ii) ''Any significant amount of funds'' means funds amounting to more than $1,500.

(f) * * *

(2) Only the following vehicles are exempt from the equity value test outlined in paragraph (f)(1)(iii) of this section:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle; and

(iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

* * * * *

12. In § 273.9:

a. Paragraphs (b)(1)(v) and (b)(4) are revised.

b. Paragraph (c)(1)(i)(E) is removed and paragraphs (c)(1)(i)(F) and (c)(1)(i)(G) are redesignated as paragraphs (c)(1)(i)(E) and (c)(1)(i)(F), respectively.

c. Paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(E) are removed and paragraphs (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D), (c)(1)(ii)(F) and (c)(1)(ii)(G) are redesignated as paragraphs (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D) and (c)(1)(ii)(E), respectively.

d. The first sentence of paragraph (c)(7) is amended by removing the number ''22'' and adding the number ''18'' in its place.

e. A new sentence is added before the last sentence in paragraph (c)(8).

f. Paragraph (c)(11) is revised.

g. Paragraphs (d)(6) and (d)(8) are removed.

h. Paragraph (d)(5) is redesignated as paragraph (d)(6) and paragraph (d)(7) is redesignated as paragraph (d)(5).

i. Newly redesignated paragraph (d)(6) is revised in its entirety.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) * * *

(1) * * *

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid under the Workforce Investment Act and monies paid by the employer.

* * * * *

(4) For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with § 273.4(c)(2).

* * * * *

(c) * * *

(8) * * * TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the payment is not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1).* * *

* * * * *

(11) Energy assistance as follows:

(i) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), including utility reimbursements made by the Department of Housing and Urban Development and the Rural Housing Service, or

(ii) A one-time payment or allowance applied for on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down-payment followed by a final payment upon completion of the work will be considered a one-time payment for purposes of this provision.

* * * * *

(d) * * *

(6) *Standard utility allowance.*

(i) *Homeless shelter deduction.* A State agency may develop a standard homeless shelter deduction up to a maximum of $143 a month for shelter expenses specified in paragraphs (d)(6)(ii)(A), (d)(6)(ii)(B) and (d)(6)(ii)(C) of this section that may reasonably be expected to be incurred by households in which all members are homeless individuals but are not receiving free shelter throughout the month. The deduction must be subtracted from net income in determining eligibility and allotments for the households. The State agency may make a household with extremely low shelter costs ineligible for the deduction. A household receiving the homeless shelter deduction cannot have its shelter expenses considered under paragraphs (d)(6)(ii) or (d)(6)(iii) of this section. However, a homeless household may choose to claim actual costs under paragraph (d)(6)(ii) of this section instead of the homeless shelter deduction if actual costs are higher and verified.

(ii) *Excess shelter deduction.* Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area. FNS will notify State agencies of the amount of the limit. Only the following expenses are allowable shelter expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (*i.e.,* the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling;

water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(iii) *Standard utility allowances.*

(A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. In States in which the cooling expense is minimal, the State agency may include the cooling expense in the electricity component. The State agency may vary the allowance by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards.

(B) The State agency must review the standards annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. State agencies must provide the amounts of standards to FNS when they are changed and submit methodologies used in developing and updating standards to FNS for approval when the methodologies are developed or changed.

(C) A standard with a heating or cooling component must be made available to households that incur heating or cooling expenses separately from their rent or mortgage and to households that receive direct or indirect assistance under the Low Income Home Energy Assistance Act of 1981 (LIHEAA). A heating or cooling standard is available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage. Households that receive direct or indirect energy assistance that is excluded from income consideration (other than that provided under the LIHEAA) are entitled to a standard that includes heating or cooling only if the amount of the expense exceeds the amount of the assistance. Households that receive direct or indirect energy assistance that is counted as income and incur a heating or cooling expense are entitled to use a standard that includes heating or cooling costs. A household that has both an occupied home and an unoccupied home is only entitled to one standard.

(D) At initial certification, recertification, and when a household moves, the household may choose between a standard or verified actual utility costs for any allowable expense identified in paragraph (d)(6)(ii)(C) of this section (except the telephone standard), unless the State agency has opted, with FNS approval, to mandate use of a standard. The State agency may require use of the telephone standard for the cost of basic telephone service even if actual costs are higher. Households certified for 24 months may also choose to switch between a standard and actual costs at the time of the mandatory interim contact required by § 273.10(f)(1)(i), if the State agency has not mandated use of the standard.

(E) A State agency may mandate use of standard utility allowances for all households with qualifying expenses if the State has developed one or more standards that include the costs of heating and cooling and one or more standards that do not include the costs of heating and cooling, the standards will not result in increased program costs, and FNS approves the standard. The prohibition on increasing Program costs does not apply to necessary increases to standards resulting from utility cost increases. Under this option households entitled to the standard may not claim actual expenses, even if the expenses are higher than the standard. Households not entitled to the standard may claim actual allowable expenses. Households in public housing units that have central utility meters and charge households only for excess heating or cooling costs are not entitled to the HCSUA but, at State agency option, may claim the LUA. Requests for approval to use a standard for a single utility must include the cost figures upon which the standard is based. Requests to use an LUA should include the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard, the average utility costs prior to use of the mandatory standard, the proposed standards, and an explanation of how the standards were computed.

(F) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency must prorate a standard that includes heating or cooling expenses among the household and the other individual, household, or both. However, the State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible.

13. In § 273.10,

a. The third and fourth sentences of paragraph (a)(1)(ii) are revised.

b. Paragraph (a)(1)(iv) is removed.

c. The third sentence of paragraph (a)(2) is amended by removing the words ''an application for recertification is submitted more than one month'' and adding in their place, ''a household, other than a migrant or seasonal farmworker household, submits an application'' and by adding a new sentence after the third sentence.

d. Three sentences are added to the end of paragraph (d)(3).

e. The second sentence of paragraph (e)(1)(i)(E) is removed.

f. Paragraphs (e)(1)(i)(G) and (e)(1)(i)(H) are redesignated as paragraphs (e)(1)(i)(H) and (e)(1)(i)(I), respectively, and a new paragraph (e)(1)(i)(G) is added.

g. Newly redesignated paragraph (e)(1)(i)(H) is revised.

h. Paragraph (e)(2)(i)(E) is amended by removing the number ''22'' wherever it appears and adding in its place the number ''18''.

i. Paragraph (f) is revised.

The additions and revisions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) * * *

(1) * * *

(ii) * * * As used in this section, the term ''initial month'' means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term ''initial month'' means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation. * * *

* * * * *

(2) * * * If a household's failure to timely apply for recertification was due to an error of the State agency and therefore there was a break in participation, the State agency shall follow the procedures in § 273.14(e). * * *

* * * * *

(d) * * *

(3) * * * For households certified for 24 months that have one-time medical expenses, the State agency must use the following procedure. In averaging any one-time medical expense incurred by a household during the first 12 months, the State agency must give the household the option of deducting the expense for one month, averaging the expense over the remainder of the first 12 months of the certification period, or averaging the expense over the remaining months in the certification period. One-time expenses reported after the 12th month of the certification period will be deducted in one month or averaged over the remaining months in the certification period, at the household's option.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(G) Subtract the homeless shelter deduction, if any, up to the maximum of $143.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

* * * * *

(f) *Certification periods.* The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months, except as specified in paragraphs (f)(1) and (f)(2) of this section:

(1) *Households in which all adult members are elderly or disabled.* The State agency may certify for up to 24 months households in which all adult members are elderly or disabled. The State agency must have at least one contact with each household every 12 months. The State agency may use any method it chooses for this contact.

(2) *Households residing on a reservation.* The State agency must certify for 24 months those households residing on a reservation which it requires to submit monthly reports in accordance with § 273.21, unless the State agency obtains a waiver from FNS. In the waiver request the State agency must include justification for a shorter period and input from the affected Indian tribal organization(s). When households move off the reservation, the State agency must either continue their certification periods until they would normally expire or shorten the certification periods in accordance with paragraph (f)(4) of this section.

(3) *Certification period length.* The State agency should assign each household the longest certification period possible, consistent with its circumstances.

(i) Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.

(ii) Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned certification periods consistent with their circumstances, but generally no less than 3 months.

(iii) Households may be assigned 1- or 2-month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.

(4) *Shortening certification periods.* The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, or the household has not complied with the requirements of § 273.12(c)(3). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency may not use the Notice of Expiration to shorten a certification period.

(5) *Lengthening certification periods.* State agencies may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the State agency extends a household's certification period, it must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in paragraph (g)(1)(i)(A) of this section.

* * * * *

14. In § 273.11,

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

b. The heading and introductory text of paragraph (c)(2) are revised, paragraph (c)(3) is redesignated as paragraph (c)(4) and a new paragraph (c)(3) is added.

c. The heading of paragraph (e) and paragraphs (e)(1) through (e)(5) are revised.

d. Paragraphs (f)(1) and (f)(7) are revised.

e. Paragraph (g)(5) is revised.

f. Paragraph (j) is removed and paragraph (k) is redesignated as paragraph (j).

The revisions and additions read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* The State agency must calculate a household's self-employment income as follows:

(1) *Averaging self-employment income.* (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.

(ii) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(iii) Notwithstanding the provisions of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, households subject to monthly reporting and retrospective budgeting who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the self-employment income (as determined in paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. The monthly net self-employment income must be added to any other earned income received by the household to determine total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer (defined for the purposes of this paragraph (a)(2)(ii) as a self-employed farmer who receives or anticipates receiving annual gross proceeds of $1,000 or more from the farming enterprise), such losses must be prorated in accordance with paragraph (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income.

(B) Offset any remaining farm self-employment losses against the total amount of earned and unearned income *after* the earned income deduction has been applied.

(iii) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment must be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency must count the full amount of the capital gain as income for food stamp purposes. For households whose self-employment income is calculated on an anticipated (rather than averaged) basis in accordance with paragraph (a)(1) of this section, the State agency must count the amount of capital gains the household anticipates receiving during the months over which the income is being averaged.

(b) *Allowable costs of producing self-employment income.* (1) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

(2) In determining net self-employment income, the following items are not allowable costs of doing business:

(i) Net losses from previous periods;

(ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in § 273.9(d)(2);

(iii) Depreciation; and

(iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

(3) When calculating the costs of producing self-employment income, State agencies may elect to use actual costs for allowable expenses in accordance with paragraphs (b)(1) and (b)(2) of this section or determine self-employment expenses as follows:

(i) For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program or a standard amount based on estimated per-meal costs.

(ii) For income from boarders, other than those in commercial boarding houses or from foster care boarders, use:

(A) The maximum food stamp allotment for a household size that is equal to the number of boarders; or

(B) A flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual.

(iii) For income from foster care boarders, refer to § 273.1(c)(6).

(iv) Use the standard amount the State uses for its TANF program.

(v) Use an amount approved by FNS. State agencies may submit a proposal to FNS for approval to use a simplified self-employment expense calculation method that does not result in increased Program costs. Different methods may be proposed for different types of self-employment. The proposal must include a description of the proposed method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase Program costs.

(c) * * *

(2) *SSN disqualification.* The eligibility and benefit level of any remaining household members of a household containing individuals who are disqualified for refusal to obtain or provide an SSN must be determined as follows:

* * * * *

(3) *Ineligible alien.* The State agency must determine the eligibility and benefit level of any remaining household members of a household containing an ineligible alien as follows:

(i) The State agency must count all or, at the discretion of the State agency, all but a pro rata share, of the ineligible

alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(i), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata share to apply the net income test and determine level of benefits. This paragraph (c)(3)(i) does not apply to an alien:

(A) Who is lawfully admitted for permanent residence under the INA;

(B) Who is granted asylum under section 208 of the INA;

(C) Who is admitted as a refugee under section 207 of the INA;

(D) Who is paroled in accordance with section 212(d)(5) of the INA;

(E) Whose deportation or removal has been withheld in accordance with section 243 of the INA;

(F) Who is aged, blind, or disabled in accordance with section 1614(a)(1) of the Social Security Act and is admitted for temporary or permanent residence under section 245A(b)(1) of the INA; or

(G) Who is a special agricultural worker admitted for temporary residence under section 210(a) of the INA.

(ii) For an ineligible alien within a category described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section, State agencies may either:

(A) Count all of the ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses; or

(B) Count all of the ineligible alien's resources, count none of the ineligible alien's income and deductible expenses, count any money payment (including payments in currency, by check, or electronic transfer) made by the ineligible alien to at least one eligible household member, not deduct as a household expense any otherwise deductible expenses paid by the ineligible alien, but cap the resulting benefit amount for the eligible members at the allotment amount the household would receive if the household member within the one of the categories described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section were still an eligible alien. The State agency must elect one State-wide option for determining the eligibility and benefit level of households with members who are aliens within the categories described paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section.

(iii) For an alien who is ineligible under § 273.4(a) because the alien's household indicates inability or unwillingness to provide documentation of the alien's immigration status, the State agency must count all or, at the discretion of the State agency, all but a pro rata share of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(iii), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata to apply the net income test and determine level of benefits.

(iv) The State agency must compute the income of the ineligible aliens using the income definition in § 273.9(b) and the income exclusions in § 273.9(c).

(v) For purposes of this paragraph (c)(3), the State agency must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

* * * * *

(e) *Residents of drug and alcohol treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic (DAA) treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Applications must be made through an authorized representative who is employed by the DAA center and designated by the center for that purpose. The State agency may require the household to designate the DAA center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

(2)(i) Prior to certifying any residents for food stamps, the State agency must verify that the DAA center is authorized by FNS as a retailer in accordance with § 278.1(e) of this chapter or that it comes under part B of title XIX of the Public Health Service Act, 42 U.S.C. 300x *et seq.*, (as defined in ''Drug addiction or alcoholic treatment and rehabilitation program'' in § 271.2 of this chapter).

(ii) Except as otherwise provided in this paragraph (e)(2), the State agency must certify residents of DAA centers by using the same provisions that apply to all other households, including, but not limited to, the same rights to notices of adverse action and fair hearings.

(iii) DAA centers in areas without EBT systems may redeem the households' paper coupons through authorized food stores. DAA centers in areas with EBT systems may redeem benefits in various ways depending on the State's EBT system design. The designs may include DAA use of individual household EBT cards at authorized stores, authorization of DAA centers as retailers with EBT access via POS at the center, DAA use of a center EBT card that is an aggregate of individual household benefits, and other designs. Guidelines for approval of EBT systems are contained in § 274.12 of this chapter.

(iv) The treatment center must notify the State agency of changes in the household's circumstances as provided in § 273.12(a).

(3) The DAA center must provide the State agency a list of currently participating residents that includes a statement signed by a responsible center official attesting to the validity of the list. The State agency must require submission of the list on either a monthly or semimonthly basis. In addition, the State agency must conduct periodic random on-site visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(4) The State agency may issue allotments on a semimonthly basis to households in DAA centers.

(5) When a household leaves the center, the center must notify the State agency and the center must provide the household with its ID card. If possible, the center must provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and must advise the household to return the form to the appropriate office of the State agency within 10 days. After the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(i) The center must provide the household with its EBT card if it was in the possession of the center, any untransacted ATP, or the household's full allotment if already issued and if no coupons have been spent on behalf of that individual household. If the household has already left the center, the center must return them to the State agency. These procedures are applicable at any time during the month.

(ii) If the coupons have already been issued and any portion spent on behalf of the household, the following procedures must be followed.

(A) If the household leaves prior to the 16th of the month and benefits are not issued under an EBT system, the center must provide the household with one-half of its monthly coupon allotment unless the State agency issues semi-monthly allotments and the second half has not been turned over to the center. If benefits are issued under an EBT system, the State must ensure that the EBT design or procedures for DAAs prohibit the DAA from obtaining more than one-half of the household's allotment prior to the 16th of the month or permit the return of one-half of the allotment to the household's EBT account through a refund, transfer, or other means if the household leaves prior to the 16th of the month.

(B) If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the center to give the household a portion of its allotment. Under an EBT system where the center has an aggregate EBT card, the State agency may, but is not required to transfer a portion of the household's monthly allotment from a center's EBT account back to the household's EBT account. However, the household, not the center, must be allowed to receive any remaining benefits authorized by the household's HIR or ATP or posted to the EBT account at the time the household leaves the center.

(iii) The center must return to the State agency any EBT card or coupons not provided to departing residents by the end of each month. These coupons include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the household with the coupons or the household left on or after the 16th of the month and the coupons were not returned to the household.

* * * * *

(f) * * *

(1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2 of this chapter) may apply either through use of an authorized representative employed and designated by the group living arrangement or on their own behalf or through an authorized representative of their choice. The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Some residents of the GLA may apply on their own behalf while other residents of the same GLA may apply through the GLA's representative. Prior to certifying any residents, the State agency must verify that the GLA is authorized by FNS or is certified by the appropriate agency of the State (as defined in § 271.2 of this chapter) including the agency's determination that the center is a nonprofit organization.

(i) If the residents apply on their own behalf, the household size must be in accordance with the definition in § 273.1. The State agency must certify these residents using the same provisions that apply to all other households. If FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf will still be able to participate if otherwise eligible.

(ii) If the residents apply through the use of the GLA's authorized representative, their eligibility must be determined as a one-person household.

* * * * *

(7) If the residents are certified on their own behalf, the food stamp benefits may either be returned to the GLA to be used to purchase meals served either communally or individually to eligible residents or retained and used to purchase and prepare food for their own consumption. The GLA may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the GLA's service or if meals are prepared at a central location for delivery to the individual residents. If personalized meals are prepared and paid for with food stamps, the GLA must ensure that the resident's food stamp benefits are used for meals intended for that resident.

(g) * * *

(5) State agencies must take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action must include acting on the reported change in accordance with § 273.12 or § 273.21, as appropriate, by issuing a notice of adverse action in accordance with § 273.13.

* * * * *

15. In § 273.12:

a. New paragraphs (a)(1)(vii) and (c)(3) are added.

b. Paragraphs (f)(3) and (f)(4) are revised, and paragraph (f)(5) is removed.

The additions and revisions read as follows:

§ 273.12 Reporting changes.

(a) * * *

(1) * * *

(vii) State agencies may opt to require households with earned income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size.

(A) Households with earned income certified for 6 months in accordance with paragraph (a)(1)(vii) of this section must not be required to report changes in accordance with paragraphs (a)(1)(ii) through (a)(1)(vi) of this section. The State agency must act on any change reported by such households that would increase their benefits in accordance with paragraph (c)(1) of this section. The State agency must not act on changes that would result in a decrease in benefits unless:

(*1*) The household has voluntarily requested that its case be closed in accordance with § 273.13(b)(12);

(*2*) The State agency has information about the household's circumstances considered verified upon receipt; or

(*3*) There has been a change in the household's PA grant, or GA grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2).

(B) Households with earned income certified for longer than 6 months under this option shall be required to submit an interim report at 6 months in accordance with paragraphs (a)(1)(i) through (a)(1)(vi) of this section. The State agency must act on any change reported by such households on the interim report in accordance with paragraph (c) of this section. If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that it will be received by the household no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

* * * * *

(c) * * *

(3) *Unclear information.* During the certification period, the State agency may obtain information about changes in a household's circumstances from which the State agency cannot readily determine the effect of the change on the household's benefit amount. The State agency might receive such unclear

information from a third party or from the household itself. The State agency must pursue clarification and verification of household circumstances using the following procedure:

(i) The State agency must issue a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances, which affords the household at least 10 days to respond and to clarify its circumstances, either by telephone or by correspondence, as the State agency directs, and which states the consequences if the household fails to respond to the RFC.

(ii) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency must issue a notice of adverse action as described in § 273.13 which terminates the case, explains the reasons for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program. When the household responds to the RFC and provides sufficient information, the State agency must act on the new circumstances in accordance with paragraphs (c)(1) or (c)(2) of this section.

(iii) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency may elect to issue a notice of adverse action as described in § 273.13 which suspends the household for 1 month before the termination becomes effective, explains the reasons for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program. If a household responds satisfactorily to the RFC during the period of suspension, the State agency must reinstate the household without requiring a new application, issue the allotment for the month of suspension, and if necessary, adjust the household's participation with a new notice of adverse action.

* * * * *

(f) * * *

(3) The State agency may not terminate a household's food stamp benefits solely because it has terminated the household's PA benefits without a separate determination that the household fails to satisfy the eligibility requirements for participation in the Program. Whenever a change results in the reduction or termination of a household's PA benefits within its food stamp certification period, the State agency must follow the procedures set forth below:

(i) If a change in household circumstances requires a reduction or termination in the PA payment and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency must take the following actions:

(A) If the change requires a reduction or termination of food stamp benefits, the State agency must issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the State agency must continue the household's food stamp benefits on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the State agency must conduct the hearing according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the State agency must make the change effective in accordance with the procedures specified in paragraph (c) of this section.

(B) If the household's food stamp benefits will increase as a result of the reduction or termination of PA benefits, the State agency must issue the PA notice of adverse action, but must not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the PA adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits must continue at the previous level. If the household does not appeal, the State agency must make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a household's benefits must be calculated from the date the PA notice of adverse action period expires.

(ii) Whenever a change results in the termination of a household's PA benefits within its food stamp certification period, and the State agency does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, and the household asks to have its TANF case closed without providing any information on the income of the new household member), the State agency must take the following action:

(A) If the situation requires a reduction or termination of PA benefits, the State agency must issue a request for contact (RFC) in accordance with paragraph (c)(3)(i) of this section at the same time it sends a PA notice of adverse action. Before taking further action, the State agency must wait until the household's PA notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and elects to have its PA benefits continued pending the appeal, the State agency must continue the household's food stamp benefits at the same level. If the household decides not to request a fair hearing and continuation of its PA benefits, the State agency must resume action on the changes as required in paragraph (c)(3) of this section.

(B) If the situation does not require a PA notice of adverse action, the State agency must issue a RFC and take action in accordance with paragraph (c)(3) of this section.

(iii) Depending on the household's response to the RFC, the State agency must take appropriate action, if necessary, to close the household's case or adjust the household's benefit amount.

(4) *Transitional Benefits Alternative.* The State agency may elect to provide households leaving TANF with transitional food stamp benefits as provided in this paragraph (f)(4). A State agency electing the Transitional Benefits Alternative (TBA) must provide transitional benefits, at a minimum, to all families with earnings who leave TANF. The State agency may not provide transitional benefits to a household which is leaving TANF when: the State agency has determined that the household is noncompliant with TANF requirements and the State agency is imposing a comparable food stamp sanction in accordance with § 273.11; the State agency has determined that the household has violated a food stamp work requirement in accordance with § 273.7; the State agency has determined that a household member has committed an intentional Program violation in accordance with § 273.16, or the State agency is closing the household's TANF case in response to information indicating the household failed to comply with food stamp reporting requirements. The State agency must use procedures at paragraph (f)(3) of this section to determine the continued eligibility and benefit level of households denied

transitional benefits under this paragraph (f)(4).

(i) When a household leaves TANF, the State agency may freeze for up to 3 months the household's benefit amount at the level the household received when it was receiving TANF. This is the household's transition period. If the household is losing income as a result of leaving TANF, the State agency must adjust the food stamp benefit amount before initiating the transition period. To provide the transition period, the State agency may extend the certification period for up to 3 months, not to exceed the maximum periods specified in § 273.10(f)(1) and (f)(2).

(ii) The State agency must issue a transition notice (TN) advising the household of the following: that the State agency must reevaluate its food stamp case no more than 3 months from the effective date of the TANF case closing; that its benefit amount will remain the same as when it was receiving cash assistance (or that the State agency has adjusted the food stamp benefit amount if the household's income is decreasing as the result of leaving cash assistance); that it is not required to report and provide verification for any changes in household circumstances until the deadline established in accordance with paragraph (c)(3) of this section (or its recertification interview, if the certification period is expiring); and that it may report changes if income decreases or expenses or household size increase.

(iii) If the household does report changes in its circumstances during the transition period, the State agency must adjust the household's benefit amount in accordance with paragraph (c) of this section, *except that*, if the reported change would cause a reduction in the household's benefit amount, the State agency must make the change effective the month following the last month of the transition period.

(iv) Before the end of the transition period, the State agency must issue the RFC specified in paragraph (c)(3) of this section and act on any information it has about the household's new circumstances in accordance with paragraph (c)(3) of this section, or recertify the household in accordance with § 273.14. At the end of the transition period, the State agency may extend the household's certification period in accordance with § 273.10(f)(5).

16. In § 273.14:

a. Paragraph (b)(1) is amended by removing the second sentence of the introductory text of paragraph (b)(1)(ii)and revising paragraph (b)(1)(iii).

b. Paragraph (b)(2) is revised.

c. Paragraph (b)(3) is amended by revising paragraph (b)(3)(i), removing the second sentence of paragraph (b)(3)(ii), and revising paragraph (b)(3)(iii).

d. Paragraph (b)(4) is amended by adding the words ''and benefits cannot be prorated'' at the end of the paragraph.

e. Paragraph (e) is revised.

The revisions read as follows:

§ 273.14 Recertification.

* * * * *

(b) * * *

(1) * * *

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter that allows for either in-person or telephone interviews, and a statement of needed verification required by § 273.2(c)(5) with the NOE.

(2) *Application.* The State agency must develop an application to be used by households when applying for recertification. It may be the same as the initial application, a simplified version, a monthly reporting form, or other method such as annotating changes on the initial application form. A new household signature and date is required at the time of application for recertification. The recertification process can only be used for those households which apply for recertification prior to the end of their current certification period, except for delayed applications as specified in paragraph (e)(3) of this section. The process, at a minimum, must elicit from the household sufficient information that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The State agency must notify the applicant of information which is specified in § 273.2(b)(2), and provide the household with a notice of required verification as specified in § 273.2(c)(5).

(3) * * *

(i) As part of the recertification process, the State agency must conduct a face-to-face interview with a member of the household or its authorized representative at least once every 12 months for households certified for 12 months or less. The provisions of § 273.2(e) also apply to interviews for recertification. The State agency may choose not to interview the household at interim recertifications within the 12-month period. The requirement for a face-to-face interview once every 12 months may be waived in accordance with § 273.2(e)(2).

* * * * *

(iii) State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires. If a household misses its scheduled interview, the State agency shall send the household a Notice of Missed Interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the State agency shall schedule a second interview.

* * * * *

(e) *Delayed processing.* (1) If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(2) If a household files an application before the end of the certification period, but fails to take a required action, the State agency may deny the case at that time, at the end of the certification period, or at the end of 30 days. Notwithstanding the State's right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month's benefits for the initial month of the new certification period. If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, the State agency shall reopen the case and provide benefits retroactive to the date the household takes the required action. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(3) If a household files an application within 30 days after the end of the certification period, the application shall be considered an application for recertification; however, benefits must be prorated in accordance with § 273.10(a). If a household's application for recertification is delayed beyond the first of the month of what would have

been its new certification period through the fault of the State agency, the household's benefits for the new certification period shall be prorated based on the date of the new application, and the State agency shall provide restored benefits to the household back to the date the household's certification period should have begun had the State agency not erred and the household been able to apply timely.

* * * * *

17. In § 273.15 paragraphs (j) and (k)(2) are revised to read as follows:

§ 273.15 Fair hearings.

* * * * *

(j) *Denial or dismissal of request for hearing.* (1) The State agency must not deny or dismiss a request for a hearing unless:

(i) The State agency does not receive the request within the appropriate time frame specified in paragraph (g) of this section, provided that the State agency considers untimely requests for hearings as requests for restoration of lost benefits in accordance with § 273.17;

(ii) The household or its representative fails, without good cause, to appear at the scheduled hearing;

(iii) The household or its representative withdraws the request in writing; or

(iv) The household or its representative orally withdraws the request and the State agency has elected to allow such oral requests.

(2) The State agency electing to accept an oral expression from the household or its representative to withdraw a fair hearing may discuss the option with the household when it appears that the State agency and household have resolved issues related to the fair hearing. However, the State agency is prohibited from coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request. The State agency must provide a written notice to the household within 10 days of the household's request confirming the withdrawal request and providing the household with an opportunity to request a hearing. The written notice must advise the household it has 10 days from the date it receives the notice to advise the State agency of its desire to request, or reinstate, the hearing. If the household timely advises the State agency that it wishes to reinstate the fair hearing, the State agency must provide the household with a fair hearing, within the time frames specified in paragraph (c) of this section and beginning the date the household advises the State agency that it wishes to reinstate its request. The State agency must reinstate a fair hearing as requested from a household at least once. The State agency must not deny a household's request for a fair hearing if the household is aggrieved by a State agency action that differs from the reinstated action.

(k) * * *

(2) Once continued or reinstated, the State agency must not reduce or terminate benefits prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action;

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(v) The household, or its representative, orally withdrew its request for a fair hearing and did not advise the State agency of its desire to reinstate the fair hearing within the time frame specified in paragraph (j)(2) of this section.

* * * * *

§ 273.21 [Amended]

18. In § 273.21:

a. Paragraph (a)(3) is removed and paragraph (a)(4) is redesignated as paragraph (a)(3).

b. Paragraph (j)(1)(vii)(A) is amended by removing the number ''22'' at the end of the second sentence and adding in its place the number ''18''.

c. Paragraph (t)(2) is removed and paragraphs (t)(3) through (t)(6) are redesignated as paragraphs (t)(2) through (t)(5).

19. § 273.25 is added to read as follows:

§ 273.25 Simplified Food Stamp Program.

(a) *Definitions.* For purposes of this section:

(1) Simplified Food Stamp Program (SFSP) means a program authorized under 7 U.S.C. 2035.

(2) Temporary Assistance for Needy Families (TANF) means a State program of family assistance operated by an eligible State under its TANF plan as defined at 45 CFR 260.30.

(3) Pure-TANF household means a household in which all members receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

(4) Mixed-TANF household means a household in which 1 or more members, but not all members, receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

(5) Assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) means ''assistance'' as defined in regulations at 45 CFR 260.31.

(b) *Limit on benefit reduction for mixed-TANF households under the SFSP.* If a State agency chooses to operate an SFSP and includes mixed-TANF households in its program, the following requirements apply in addition to the statutory requirements governing the SFSP.

(1) If a State's SFSP reduces benefits for mixed-TANF households, then no more than 5 percent of these participating households can have benefits reduced by 10 percent of the amount they are eligible to receive under the regular FSP and no mixed-TANF household can have benefits reduced by 25 percent or more of the amount it is eligible to receive under the regular FSP. Reductions of $10 or less will be disregarded when applying this requirement.

(2) The State must include in its State SFSP plan an analysis showing the impact its program has on benefit levels for mixed-TANF households by comparing the allotment amount such households would receive using the rules and procedures of the State's SFSP with the allotment amount these households would receive if certified under regular Food Stamp Program rules and showing the number of households whose allotment amount would be reduced by 9.99 percent or less, by 10 to 24.99 percent, and by 25 percent or more, excluding those households with reductions of $10 or less. In order for FNS to accurately evaluate the program's impact, States must describe in detail the methodology used as the basis for this analysis.

(3) To ensure compliance with the benefit reduction requirement once an SFSP is operational, States must describe in their plan and have approved by FNS a methodology for measuring benefit reductions for mixed-TANF households on an on-going basis

throughout the duration of the SFSP. In addition, States must report to FNS on a periodic basis the amount of benefit loss experienced by mixed-TANF households participating in the State's SFSP. The frequency of such reports will be determined by FNS taking into consideration such factors as the number of mixed-TANF households participating in the SFSP and the amount of benefit loss attributed to these households through initial or on-going analyses.

(c) *Application processing standards.* Under statutory requirements, a household is not eligible to participate in an SFSP unless it is receiving TANF assistance. If a household is not receiving TANF assistance (payments have not been authorized) at the time of its application for the SFSP, the State agency must process the application using the regular Food Stamp Program requirements of § 273.2, including processing within the 30-day regular or 7-day expedited time frame, and screening for and provision of expedited service if eligible. The State agency must determine under regular food stamp rules the eligibility and benefits of any household that it has found ineligible for TANF assistance because of time limits, more restrictive resource standards, or other rules that do not apply to food stamps.

(d) *Standards for shelter costs.* Legislation governing the SFSP requires that State plans must address the needs of households with high shelter costs relative to their income. If a State chooses to standardize shelter costs under the SFSP, it must, therefore, use multiple standards that take into consideration households with high shelter costs versus those with low shelter costs. A State is prohibited from using a single standard based on average shelter costs for all households participating in an SFSP.

(e) *Opportunity for public comment.* States must provide an opportunity for public input on proposed SFSP plans (with special attention to changes in benefit amounts that are necessary in order to ensure that the overall proposal not increase Federal costs) through a public comment period, public hearings, or meetings with groups representing participants' interests. Final approval will be given after the State informs the Department about the comments received from the public. After the public comment period, the State agency must inform the Department about the comments received from the public and submit its final SFSP plan for Departmental approval.

PART 274—ISSUANCE AND USE OF COUPONS

19. In § 274.2:

a. The last sentence in paragraph (a) is removed; and

b. Paragraph (g) is revised to read as follows:

§ 274.2 Providing benefits to participants.

* * * * *

(g) *Issuance in rural areas.* Unless the area is served by an electronic benefit transfer system, State agencies must use direct-mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation in order to obtain their food stamp benefits by methods other than direct-mail issuance. State agencies must report any exceptions to direct-mail issuance as specified under § 272.3(a)(2) and (b)(2) of this chapter.

§ 274.5 [Removed and Reserved]

20. Section 274.5 is removed and reserved.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

21. In § 277.4, two sentences are added to the end of paragraph (b) introductory text to read as follows:

§ 277.4 Funding.

* * * * *

(b) Federal reimbursement rate. * * * This rate includes reimbursement for food stamp informational activities but not for recruitment activities. Recruitment activities are those activities designed to persuade an individual who has made an informed choice not to apply for food stamps to change his or her decision and apply.

* * * * *

Dated: November 9, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

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