

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272 and 273

[Amendment No. 399]

RIN 0584-AB51

#### Food Stamp Program: Disqualified Recipient Reporting and Computer Matching Requirements That Affect the Food Stamp Program

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** In this rule the Food and Nutrition Service proposes to codify prisoner verification and death matching procedures mandated by legislation and previously implemented through agency directive. The proposed rule will require that State food stamp agencies use disqualified recipient data to screen all program applicants prior to certification to assure that they are not currently disqualified from the program and thus ineligible to participate. The proposed rule also addresses requirements that State food stamp agencies participate in a computer matching program using a system of records that adhere to provisions of the Computer Matching and Privacy Protection Act of 1988, as amended. Finally, publication of this proposed rule responds to findings of General Accounting Office and USDA Office of Inspector General audits that found, among other things, that the disqualified reporting subsystem process could be improved to enhance State agency ability to identify currently disqualified food stamp recipients.

**DATES:** Comments must be received on or before February 6, 2007.

**ADDRESSES:** The Food and Nutrition Service (FNS) invites interested persons to submit comments on this proposed rule by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: Comments may be e-mailed to [Ed.Speshock@fns.usda.gov](mailto:Ed.Speshock@fns.usda.gov). Include "DRS Proposed Rule" in the subject line of the message.

- Fax: Comments may be faxed to the attention of Edward Speshock at (703) 605-0795.

- Mail: Comments may be submitted to the Food and Nutrition Service, Food Stamp Program, Program Accountability Division, State Administration Branch, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

All comments will be available for public inspection at the above address between the hours of 9:30 a.m. and 3:30 p.m. Monday through Friday. You may also download an electronic version of this proposed rule at <http://www.fns.usda.gov/fsp/rules/Regulations/default.htm>.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed rule, contact Mr. Edward Speshock at (703) 305-2383.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

##### Regulatory Impact Analysis

###### Need for Action

This action is proposed to codify changes in procedures regarding prisoner verification mandated by the Balanced Budget Act of 1997 (Pub. L. 105-33) and amendments to the Food Stamp Act enacted in Public Law 105-379 (Food Stamp Fraud Prevention) regarding death matching. The Balanced Budget Act amendment requires each State to establish a system to ensure that persons under court ordered detention are not counted as members of food stamp households. The Public Law 105-379 amendment requires State agencies to ensure deceased individuals are not counted as household members. The proposed rule also includes requirements that State food stamp agencies participating in computer matching programs using a system of records adhere to provisions of the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), as amended. In addition, this action proposes to revise Food Stamp Program (Program) regulations to

enforce penalties for intentional Program violations (IPV) on disqualified food stamp recipients identified by the disqualified reporting system process.

#### Costs/Benefits

Prisoner verification and death match procedures were mandated by legislation and implemented by agency directive some years ago. Currently all States perform data matches of prisoner and death records at certification. However, with regard to matches with client disqualification information, currently States are only required to do periodic matches and only a few States perform routine matches at initial certification. The resultant annual Program savings from these ongoing matches at certification are estimated to be \$100 million for the five-year period 2006-2010. Further, no State performs routine matches at recertification against prisoner records, death records, or records of client disqualification. Requiring all States to match against disqualification records at initial certification and to match against prisoner, death, and disqualification records at recertification will yield an estimated \$51 million in Program savings during the five-year period 2006-2010, including \$15 million in one-time savings from performing matches on long-term participants who never were matched at initial certification. Total Program savings for initial certification and recertification will total an estimated \$30 million the first full year of implementation and \$151 million for the period 2006-2010.

#### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Nancy Montanez Johner, 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. Applicants and participants may be affected to the extent that matching client information with Disqualified Recipient Subsystem (DRS) records may identify a current finding of an IPV and therefore prevent Program participation.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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, FNS 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 in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 202 of the UMRA generally requires FNS 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) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. This rule, therefore, is not subject to the requirements of Sections 202 and 205 of the UMRA.

### Executive Order 12372

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

### Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's consideration in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

### Prior Consultation with State Officials

Prior to drafting this proposed rule, FNS consulted with State and local agencies at various times. Because the Food Stamp Program is a State administered, Federally funded program, FNS regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement

allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other food stamp rules. FNS has responded to numerous written requests for policy guidance on IPV disqualification data reporting. Also, guidance for the prisoner verification and deceased data matching programs were implemented by agency directive with the consultation and input from State and local food stamp agencies.

### Nature of Concerns and the Need to Issue This Rule

State and local food stamp agencies generally want greater flexibility in the implementation of Program administrative responsibilities. This proposed rule, in our opinion, will provide flexibility in this area and also address another major State concern, which is the need to conform FSP rules to the rules of other means-tested Federal programs. Specific policy questions submitted by State agencies helped FNS identify issues that needed to be addressed in the proposed rule.

### Extent to Which We Meet Those Concerns

FNS has considered the impact of this proposed rule on State and local agencies. This rule proposes changes that are required by law, such as the prisoner verification and deceased person data match programs. These changes were implemented by agency directives in response to implementation time frames required in legislation. The proposed changes to Food Stamp Program rules describing State agency responsibility for reporting IPV disqualification information will clarify information access and follow-up procedures, and provide greater flexibility to State agencies for processing, retaining and sharing disqualification information. FNS is not aware of any case where the discretionary provisions of the rule would preempt State law. In addition, FNS invites State agencies to submit requests for waiver consideration of any discretionary provisions of this rule where a State agency can demonstrate that its own procedures would be more effective and efficient; such a waiver would not result in a material impairment of any statutory or regulatory rights of participants; and, such a waiver would otherwise be consistent with the waiver authority set out at §§ 272.3(c).

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have

preemptive effect with respect to any State and local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation.

This rule is not intended to have retroactive effect unless so specified in the Effective Dates paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

In the Food Stamp Program, the State administrative procedures for Program benefit recipients are issued pursuant to 7 U.S.C. 2020(e)(1) and set forth at § 273.15; the administrative procedures for State agencies are issued pursuant to 7 U.S.C. 2023 and are set out at § 276.7 (for rules related to non-QC liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); and the administrative procedures for retailers and wholesalers are issued pursuant to 7 U.S.C. 2023 and set out at § 278.8 and 7 CFR Part 279.

### Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify and address any major civil rights impact the rule might have on protected classes, including 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 individual participants, FNS has determined that there is no way to soften the effect on any of the protected classes. 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 State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, gender, age, disability, marital status or family status. (FSP nondiscrimination policy can be found at § 272.6(a)). Where State agencies have options, and they chose to implement a certain provision, they must implement it in such a way that it complies with the regulations at § 272.6.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; see 5 CFR 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current

valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from the adoption of the proposals in this rule.

Comments on the collection of information in this proposed rule must be received by February 6, 2007.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC, 20503. Please also send a copy of your comments to Edward Speshock, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA, 22302. For further information, or for copies of the information collection, please contact Mr. Speshock at the above address. Comments are invited on: (a) Whether the proposed collection

of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information including the validity of the methodology and the assumptions used; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Repayment Demand and Program Disqualification.

*OMB Number:* 0584-0492.

*Expiration Date:* April 30, 2008.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Under §§ 273.2(f)(11) and 273.16 State agencies are required to report and verify information on disqualified individuals to FNS. This is not a new requirement. Previously, State agencies have been required to report such information via paper report form to FNS regional offices to be entered into a disqualified recipient database. Printouts or computer tapes were then provided to the States for their use in meeting intentional Program violation requirements. This reporting is now handled electronically from the States to the FNS disqualified recipient database.

With the provisions in this rule, we are proposing to amend the data requirements and the frequency with which state agencies access the disqualified reporting subsystem. Other burden requirements remain unchanged.

*Respondents:* State Agencies.

*Estimated Number of Respondents:* 53.

*Estimated Burden:*

DISQUALIFICATION REPORTING \*

Component	Number of respondents	Total annual responses	Time per response in hours	Annual burden hours
Applicant/Recipient Screening .....	53	10.1 million ..	.041667	423,333
Disqualified Penalty Screening .....	53	60,000 .....	.041667	2,500

\* Note: The burden for DRS applicant/recipient screening and penalty screening is in addition to the total currently approved of 166,329 hours. The revised total annual Burden is therefore 589,662 (166,329 plus 423,333).

REPAYMENT DEMAND AND PROGRAM DISQUALIFICATION

Component	Number of respondents	Total annual responses	Time per response in hours	Annual burden hours
Estimated Burden for Repayment Demand and Program Disqualification .....	53	1,600,981	0.10389	166,326

*Total Annual Burden:* Currently approved burden is 166,329 hours. This submission would increase total burden by 423,333 hours.

**E-Government Act Compliance**

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. As described above, the information collection associated with this regulation is available for electronic submission.

**Background**

**Prisoner Verification System (PVS) Matching Program**

Section 1003 of the Balanced Budget Act of 1997 (Pub. L. 105-33) amended Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)) to require States to establish systems and take periodic action to ensure that an individual who is detained in a Federal, State, or local penal, correctional, or other detention facility for more than 30 days shall not be eligible to be counted as household members participating in the Food Stamp Program. The mandated requirements of the Balanced Budget Act of 1997 became effective on August 5, 1998. For the purpose of this rule the term "Federal, State, or local penal, correctional or other detention facility" includes, but is not limited to, city,

county and multi-jurisdictional jails, work and boot camps, residential halfway houses (e.g., in conjunction with work release or community service programs), detention centers (including juvenile detention centers), and mental health and medical facilities housing prisoners on behalf of correctional institutions. Individuals who are detained in residential halfway houses or who are detained under house detention, should not be denied eligibility unless the State agency has determined that the individual's meals are provided by the institution. This requirement strengthens current regulations at § 273.1(a), which prohibit the inclusion of an individual who is currently in an institution described above as a member of a food stamp household. States should continue to follow the procedures at § 273.1(a) in

establishing household composition at certification and periodically thereafter. The required verification system should be used to verify that no household member is under detention in a prison facility, in conjunction with established verification rules at § 273.2(f). The law further provides that a State opting to obtain and use prisoner information collected by the Social Security Administration (SSA) under Section 1611(e)(1)(I)(i)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)(i)(I)) pursuant to Section 1611(e)(1)(I)(ii)(II) (42 U.S.C. 1382(e)(1)(I)(ii)(II)) of that Act, shall be considered in compliance with this provision. Finally, the law provides that such verification be performed "periodically." However, it does not specify when verification must take place. FNS believes it is good administrative practice to prevent errors before they happen. Therefore, we are proposing to amend current regulations by adding a new § 272.13(c) to require States to conduct PVS checks at application and re-certification.

#### Matching Death Records

This proposed rule implements requirements to match death records enacted by Public Law 105-379 on November 12, 1998. Public Law 105-379, which amended Section 11 of the Food Stamp Act (7 U.S.C 2020), requires all State agencies to enter into a cooperative arrangement with the Social Security Administration (SSA) to obtain information on individuals who are deceased and use the information to verify and otherwise ensure that benefits are not issued to such individuals. The law was effective on June 1, 2000. The mandated requirements were implemented by FNS directive to all food stamp State agencies on February 14, 2000. State agencies are responsible for entering into a matching agreement with the SSA in order to access information on deceased individuals. This rule proposes to add a new § 272.14 to codify this requirement in regulation and to describe requirements for accessing the SSA death master file.

Under current rules at § 273.12(a) and § 273.21, it is the food stamp household's responsibility to report changes in household composition, such as the addition or loss of a household member. Households must report household composition changes within 10 days of becoming aware of the change or, if subject to periodic reporting, by the appropriate date. Thus, the accuracy of program benefits issued to a household relies on the accuracy of reported and verified information.

The SSA death master file database contains over 60 million records. SSA receives death reports from numerous sources, including the Centers for Medicare and Medicaid Services, Department of Veterans Affairs, postal authorities, and other internal and external sources. A small percentage of deaths reported to SSA are from family members and funeral homes.

FNS proposes in new § 272.14 that State agencies independently verify the records before taking adverse action against a household with an unreported deceased household member. This is consistent with amendments to the Computer Matching Act requiring that computer match information be verified before it can be used to take action against an individual.

State food stamp agencies are encouraged to use the SSA State Verification and Exchange System (SVES) for accessing deceased information. Use of SVES would be the most cost-effective method since State agencies already have agreements with SSA to access information through SVES.

In this rule, FNS is proposing standards for how often State agencies must conduct matches to be reasonably certain that food stamp benefits are not being issued to deceased individuals. Thus, consistent with other matches described in this rule, we are proposing that State agencies conduct a match for deceased household members at certification and recertification. This minimum standard for how often a match must be conducted is specified in the rule under newly proposed § 272.14.

#### Disqualified Recipient Matching

FNS participates in a computer matching program in which it serves as both a source and a recipient agency. This required Federal matching program known as the Disqualified Recipient Subsystem (DRS) uses a Computer Matching and Privacy Protection Act system of records and contains information about individuals who have been disqualified from the Food Stamp Program for an IPV (See 5 U.S.C. 552a (o), (p) and (q)). The database can be accessed by State agencies to assign the legally required penalty period for intentional Program violations. State agencies also use information from the system to screen new applicants and current food stamp recipients to determine if they should be serving a disqualification penalty imposed by another State. The Computer Matching and Privacy Protection Act provides that the Office of Management and Budget shall be responsible for computer matching guidance. Final guidance was

published in the **Federal Register** on June 19, 1989, at 54 FR 25818, and is incorporated by reference in this proposed rule. FNS proposes to amend § 273.2(f) to address the verification requirements for the disqualified recipient matching program. Current regulations at § 273.16(i)(4) provide that, at a minimum, the disqualification data submitted to FNS by State agencies shall be used to determine the appropriate disqualification penalty to impose, based on past disqualifications, and the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another State. Under this proposed rule State food stamp agencies must also begin to use disqualified recipient data to screen all program applicants prior to certification. State agencies may also periodically match the entire database of disqualified individuals against their current recipient caseload to determine if the applicant or recipient should be serving a disqualification.

FNS proposes in new § 273.2(f)(11)(iii), that a State agency may not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or food stamp recipient based on information produced by a disqualified recipient match unless the match information has been independently verified. This is consistent with the Computer Matching Act that ensures client due process protection by requiring the matching agency to provide applicants and/or recipients a notice and opportunity to contest when a specific match result may lead to an adverse action. FNS also proposes in new § 273.2(f)(11)(iv) that the State agency initiating the disqualified recipient search contact the State agency locality contact that originated the disqualification or the applicant or recipient household for verification prior to taking an adverse action. The disqualified recipient match information would be verified by obtaining a copy of the original document, or copies of documentation of an individual's disqualification history (past and current disqualifications) or confirmation of the existence of specific relevant documents that substantiate the disqualification record. Under the proposal, documentation would include, but not be limited to, court determinations, signed declarations by individuals waiving the right to an administrative disqualification hearing, signed disqualification consent agreements by individuals, a hearing authority's

decision, and the notification of disqualification. Any confirmation as to the existence of the above documentation shall be made by the originating State's locality contact or another designated State official. Written confirmation shall be documented in the case record with a copy of one of the documents described above. This is consistent with current verification procedures at § 273.2(f)(4) that documentary evidence shall be the primary source of verification.

To ensure interstate cooperation, FNS further proposes to require that disqualification documentation be transmitted to a requesting State agency in a timely fashion. To encourage cooperation in the exchange of documentation, FNS proposes to provide State agencies the flexibility to decide how the information can be exchanged. FNS will permit alternatives including, but not limited to, reviewing original documents related to prior disqualifications; written confirmation of having seen the documents; obtaining copies of original documents from each State that played a role in the determination and implementation of the prior disqualifications; and, obtaining copies of supporting documentation for all disqualifications from the last State agency to take a disqualification action against an individual. FNS intends by this proposed rule that requests and responses to requests for verification must be transmitted in a manner that protects the privacy of the individual household.

FNS does not intend to require a specific timeframe for State agencies to respond to various types of requests for verification. Prompt responses to verification requests, however, can help to expedite the delivery of benefits and avoid or reduce any overissuance to the household containing the individual in question. FNS believes it is in each State agency's interest to expedite requests for verification since all State agencies may find themselves in the position of a requesting agency at some point. Prudent management would suggest that a State agency that receives a request for documentation supporting disqualification information must be able to respond to the request within a reasonable amount of time from the date it receives the request. For this purpose the proposed rule will define a "reasonable amount of time" to be 20 working days or less from the postmarked date of request. FNS requests comments that support this definition or provide reasoned arguments suggesting a more workable

definition of a "reasonable amount of time".

State agencies must act promptly to request verification to ensure that documentation can be made available to them in sufficient time to avoid the possibility of delays in the processing of applications pursuant to § 273.2(h). The State agency making the request should document in the case record the period of elapsed time taken by the State agency locality contact for verification to be provided.

In the event a State agency is not able to provide independent verification of a disqualified recipient match because of a lack of supporting documentation, the State agency would be required to advise the requesting State agency, or FNS (in the case of resolving a dispute about the accuracy of a disqualification record), as appropriate, and take immediate action to remove the unsupported disqualified record from the disqualification database. Procedures for reporting such disqualification records are proposed in § 273.16(i) of this rule. In such instances, the requesting State agency would be prohibited from taking any adverse action against the household based on the unverified disqualification information.

FNS proposes, in new § 273.2(f)(11)(vi), that the requesting State agency would enter the received information into the household's case record immediately upon receipt. The documentation should be reviewed to insure that the information pertains to the individual and disqualification in question. Once satisfied about the validity of the information, the requesting State shall provide the household notice of the IPV match result (along with the intended action to be taken based on the computer match) and an opportunity to contest by sending the appropriate notice to the household.

States are prohibited from denying benefits to an applicant household without first verifying the accuracy of the disqualification information. State agencies shall not deny an application if the independent verification is not available in time to satisfy the application processing standard. This policy is consistent with procedures at § 273.2(f). Also, the 30-day application processing standard at § 273.2(f) applies if a State agency is matching applicant information using the optional IVES and SAVE verification systems. FNS believes the policy pertaining to IPV matches should be consistent in order to provide the State agency a uniform procedure for reviewing and verifying all independently verified information.

If the information under verification indicates that an individual is currently disqualified, then the individual would not be eligible to receive benefits and certifying eligibility would result in an overissuance. A State certifying the ineligible individual would, once corroboration is received, issue a notice of adverse action to remove the individual from the program, adjust the household's allotment, and possibly establish a recipient claim against the household for the overissued benefits. The proposed rule is intended to reduce the incidence of ineligibility determination and unnecessary administrative burden.

#### **Application Screening To Determine Status of Eligibility**

Current regulations at § 273.11(c) are silent regarding a disqualified individual who moves from one jurisdiction or State to another while disqualified and, either as a single household or as a member of another food stamp household, applies for benefits. Accordingly, FNS proposes to amend § 273.11(c)(4)(i) to require that the disqualified individual and, if applicable, the household, be informed of their eligibility status and the effect of the disqualification on the eligibility and benefits of the remaining household members. FNS intends that the State agency follow the procedures in § 273.11(c) for determining if the household is still eligible for benefits and what the new benefit amount will be.

#### **Disqualified Recipient Data Requirements**

Current food stamp regulations at § 273.16(i) provide that State agencies shall report individuals to FNS who have been disqualified due to an intentional Program violation. FNS proposes to amend § 273.16(i) to update the format used by State agencies to report and access intentional Program violation disqualification information. The new data elements to be included in the revised format are Decision Date; Gender; Type of Offense; and, Locality Contact Information. In addition, FNS proposes to include new language in § 273.16(i) that describes the "electronic transmittal from the State agency" to FNS of IPV information. State agencies have been provided extensive information and consultation by FNS to evaluate the options for submitting data including documentation, training and user manuals. FNS has worked with States to ensure the options are varied and flexible enough to make it technically feasible for all State agencies to electronically submit the information

required under this proposed rule. FNS therefore proposes to amend § 273.16 to include these four new elements to provide data clarification and to promote conformity with other Federal databases, such as those from the Social Security Administration, which includes this information as data fields in computer matches.

This proposed rule would also define “disqualification decision date” as the date a disqualification decision was rendered as a result of either an administrative or judicial hearing, or the date an individual signs either a waiver of his/her right to an administrative disqualification hearing or a disqualification consent agreement waiving his/her right to a court hearing. By signing a waiver or disqualification consent agreement, an individual agrees to accept a disqualification penalty in lieu of a hearing. Addition of the disqualification decision date makes it easier for State agencies to track and verify information about individual disqualifications. The above definition is included in § 273.16(i)(3)(i) of this proposed rule. In addition, proposed section § 273.16 (i)(3)(iii) defines a “locality contact” as a person, position or entity designated by the State agency as the point of contact for other State agencies to verify information in a disqualification record supplied by the locality contact’s State.

FNS is proposing to include a field to record the type of offense—the action an individual took or failed to take which resulted in an intentional Program violation as defined in § 273.16(c)—in order to identify violations applicable to the increased penalties for illegally exchanging coupons for firearms, ammunition, explosives or controlled substances. In addition to providing statistical data on the number of violations affected by the new penalties, this field would make it easier for State agencies to track and assign the appropriate penalty. FNS also believes that valuable information can be obtained from the reporting of various types of violations that will be made available to States. Reporting of these violations could assist FNS in determining, for example, where stiffer penalties could be enforced for certain violations. FNS intends to produce a list of offenses by category for reporting purposes. Each category will be assigned its own code. State agencies would be required to report the type of offense by recording the appropriate code.

Current regulations at § 273.16(i)(4) describe the uses of the data. FNS intends to retain present mandatory uses of the data. FNS is proposing to

amend this Section to require that State food stamp agencies use disqualification data in the determination of the eligibility of all applicants or current recipients of program benefits. FNS believes Congressional intent in requiring a database of disqualified recipient information is to give State agencies the ability to determine and assign the appropriate period of disqualification for persons who commit intentional Program violations and to ensure that the appropriate penalty is enforced. In order to ensure that individuals who are not entitled to benefits due to a disqualified recipient disqualification are prevented from participating, FNS believes States must screen applicants at certification and current recipient caseload periodically. FNS believes this requirement will strengthen the effectiveness of State agencies in reducing the potential for overissuance of program benefits.

Accordingly, the requirements at § 273.16(i)(4) are being expanded to describe the need to screen disqualified recipient data at certification and included under the proposed new § 273.2(f)(11) as paragraphs (f)(11)(i)(A), (f)(11)(i)(B), (f)(11)(iii)(A), and (f)(11)(iii)(B).

#### **Disqualification Record Retention**

The current regulations at § 272.1(f) require that program records be retained for a period of 3 years from the month of origin and that fiscal records such as those relating to claims and restored benefits and accountable documents be retained for 3 years from the date of fiscal or administrative closure. The current regulations at § 273.16(b) provide that an individual can be disqualified from participating in the program permanently. “Permanent” in this rule is defined as the remainder of the individual’s lifetime or another shorter period established by FNS as administratively appropriate. Due to the nature of the disqualification penalties, FNS believes it is appropriate that case records relating to intentional Program violation disqualifications, associated client notices, and records generated as a result of using disqualification information be retained indefinitely, until the State agency receives reliable information that the person has died, or until advised by FNS that the individual is 80 years old and the State should remove the record from the database. Retaining such records indefinitely or until the disqualified individual reaches his/her 80th birthday will assure that accurate information is retained and available consistent with Congressional intent.

Accordingly, in addition to proposed requirements in § 273.16(i) of this proposed rule to update or delete disqualification records under certain circumstances, FNS proposes, in § 272.1(f)(3), that disqualification records provided to State agencies be maintained by the State agencies for as long as such records are accurate, timely, relevant, and complete. Each State shall be responsible for the destruction of disqualified recipient records in their possession when they are no longer accurate, timely, relevant, and complete. FNS expects that this records destruction will take place automatically each time a State food stamp agency receives a new or updated database from FNS or in accordance with a formal process of periodic review and purging of these records. State food stamp agencies would be permitted to follow prescribed records management programs to meet this requirement. Information about the State’s records management program is included with the State agency plan as described in § 272.10(b)(3) of Program regulations.

#### **Computer Match Benefit Adjustments**

Food stamp households receiving benefits under Federal benefit programs may periodically receive cost-of-living adjustments (COLAs). State agencies are required under § 273.12(e)(3) to establish procedures for making changes to food stamp benefits to reflect these COLAs and to provide a notice of change to affected households. Current COLA adjustment procedures take two forms. Under the first method, a State agency may calculate the expected increase by applying the appropriate percentage adjustment to the household’s current income. Under the second method, a State agency may use results of a computer match of the updated income information to adjust household income. The recalculated, or updated, income information then provides the basis for recalculating the household’s food stamp benefit.

The second method for making benefit adjustments constitute a computer match covered by the Computer Matching Act. It compares information provided by a Federal source to a State record, using a computer to perform the comparison; and it affects eligibility or the amount of benefits for a Federal benefit program. Therefore, the information must be independently verified and the food stamp household must be provided notice and an opportunity to contest the adverse action if the adjustment would change the level of benefits or eligibility status of the household.

Accordingly, the Department is proposing to amend § 273.12(e)(3) to specify that there will be two procedures for states to apply in determining COLA adjustments. A new § 273.12(e)(3)(i) is proposed to allow the use of calculated percentage increases to present COLAs. A new § 273.12(e)(3)(ii) would allow the use of computer information from a Federal agency database to make the adjustment and require independent verification and notice in accordance with § 273.2(f)(9). The Department is also proposing to amend § 273.13(b)(1) to require that a notice of adverse action be sent when computer generated adjustments result in increased income and a change of food stamp benefits.

### Implementation

State agencies have been instructed through FNS directive to implement the provisions of the prisoner verification (Pub. L. 105–33) and Death File matches (Pub. L. 105–379) as required in the applicable legislation and without waiting for formal regulations. Implementing requirements of the Computer Matching and Privacy Act (Pub. L. 100–503) as they may pertain to IPV matching agreements and procedures for denial of benefits resulting from these computer matches are incorporated by reference in this proposed rule. FNS proposes that the changes in this rule be effective and must be implemented the first day of the month 60 days from date of publication of the final rule. FNS intends to require that the provisions of the final rule which reformat database information elements would be implemented by requiring State food stamp agencies to begin identifying the new data elements for IPV reporting purposes described in § 273.16—locality contact, disqualification decision date, type of offense and gender—not later than 90 days from the effective date of the final rulemaking. State food stamp agencies shall have up to 180 days after the effective date of the final rule to implement one of the optional uses of disqualified reporting system identified at § 273.16(i). Finally, FNS proposes that State food stamp agencies would be required to comply with all remaining provisions of the final rulemaking not later than 180 days from the publication date of the final rulemaking.

### List of Subjects

#### 7 CFR Part 272

Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

#### 7 CFR Part 273

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

For the reasons set out in the preamble, 7 CFR Parts 272 and 273 are proposed to be amended as follows:

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

**Authority:** 7 U.S.C. 2011–2036.

### PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (f) is revised to read as follows:

#### § 272.1 General terms and conditions.

\* \* \* \* \*

(f) *Retention of records.* Each State agency shall retain all program records in an orderly fashion, for audit and review purposes, for a period not less than 3 years from the month of origin of each record. In addition:

(1) The State agency shall retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal Government have been liquidated. Administrative closure means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include but are not limited to claims and documentation of lost benefits.

(2) Case records relating to intentional Program violation disqualifications and related notices to the household shall be retained indefinitely, until the State agency obtains reliable information that the record subject has died, or until FNS advises via the edit report that records for a particular individual should be permanently removed from the database because of the individual's 80th birthday.

(3) Disqualification records in a State agency's possession must be periodically purged when they are no longer accurate, relevant, timely, or complete. The State agency shall follow a prescribed records management program to meet this requirement. Information about this program shall be available for FNS review.

(4) Retention methods for Authorization to Participate cards are provided in Part 274 of this chapter.

\* \* \* \* \*

3. New §§ 272.12, 272.13, and 272.14 are added to read as follows:

#### § 272.12 Computer matching requirements.

(a) *General purpose.* The Computer Matching and Privacy Protection Act (CMA), as amended, addresses the use of information from computer matching programs that involve a Federal System of Records subject to the Privacy Act of 1974, as amended. Each State agency participating in a computer matching program shall adhere to the provisions of the CMA if it uses an FNS system of records for the following purposes:

(1) Establishing or verifying initial or continuing eligibility for Federal benefit programs;

(2) Verifying compliance with either statutory or regulatory requirements of the Federal benefit programs; or

(3) Recouping payments or delinquent debts under such Federal benefit programs.

(b) *Matching agreements.* State agencies must enter into written agreements with USDA/FNS, consistent with 5 U.S.C. 552a(o) of the CMA, in order to participate in a matching program involving a USDA/FNS Federal system of records.

(c) *Use of computer matching information.*

(1) A State agency shall not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or recipient based on information produced by a Federal computer matching program that is subject to the requirements of the CMA, unless:

(i) The information has been independently verified by the State agency (in accordance with the independent verification requirements set out in the State agency's written agreement as required by paragraph (b) of this section) and a Notice of Adverse Action or Notice of Denial has been sent to the household, in accordance with § 273.2(f); or

(ii) The Federal agency's Data Integrity Board has waived the two-step independent verification and notice requirement and notice of adverse action has been sent to the household, in accordance with § 273.2(f).

(2) A State agency which receives a request for verification from another State agency, or from FNS pursuant to the provisions of § 273.16(i) shall, within 20 working days of receipt, respond to the request by providing necessary verification (including copies of appropriate documentation and any statement that an individual has asked to be included in their file), as provided in § 273.16(i)(4).



**§ 272.13 Prisoner verification system (PVS).**

(a) *General.* Each State agency shall establish a system to monitor and prevent individuals who are under detention in any Federal, State, and/or local detention or correctional institutions for more than 30 days from being included in a food stamp household.

(b) *Use of match data.* State prisoner verification systems shall provide for:

(1) The comparison of identifying information about each household member against identifying information about inmates of institutions at Federal, State and local levels;

(2) The reporting of instances where there is a match;

(3) The independent verification of match hits to determine their accuracy;

(4) Notice to the household of match results;

(5) An opportunity for the household to respond to the match prior to an adverse action to deny, reduce, or terminate benefits; and,

(6) The establishment and collections of claims as appropriate.

(c) *Match agreement.* States shall make a comparison of match data (at a minimum) at the time of application, at each recertification, and whenever a new member is added to a household. However, States that opt to obtain and use prisoner information collected under Section 1611(e)(1)(I)(i)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)(i)(I)) shall be considered in compliance with this section. Such States shall enter into a computer matching agreement with the SSA under authority contained in 42 U.S.C. 405(r)(3).

**§ 272.14 Deceased matching system.**

(a) *General.* Each State agency shall establish a system to verify and ensure that benefits are not issued to individuals who are deceased.

(b) *Data source.* States shall use the death master file data provided by the Social Security Administration (SSA). State agencies electing to obtain the data through the SSA State Verification and Exchange System (SVES) shall enter into a computer matching agreement with SSA pursuant to authority to share data contained in 42 U.S.C. 405(r)(3).

(c) *Use of match data.* States shall provide a system for:

(1) The comparison of identifying information about each household member against identifying information about deceased individuals. States shall make the comparison of match data at the time of application and periodically thereafter;

(2) The reporting of instances where there is a match;

(3) The independent verification of match hits to determine their accuracy;

(4) Notice to the household of match results;

(5) An opportunity for the household to respond to the match prior to an adverse action to deny, reduce, or terminate benefits; and,

(6) The establishment and collection of claims as appropriate.

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

4. In § 273.2, a new paragraph (f)(11) is added to read as follows:

**§ 273.2 Application processing.**

\* \* \* \* \*

(f) \* \* \*

(11) *Use of disqualification data.*

(i) Pursuant to § 273.16(i), information in the disqualified recipient database will be available for use by any State agency that executes a computer matching agreement with FNS. The State agency shall use the disqualified recipient database for the following purposes:

(A) Ascertain the appropriate penalty to impose based on past disqualifications in a case under consideration;

(B) Conduct matches on:

(1) Program application information prior to certification; and

(2) The current active and inactive disqualified individuals database against the current recipient caseload periodically but no less than a bi-monthly schedule.

(ii) State agencies shall not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or food stamp recipient based on disqualified recipient match results unless the match information has been independently verified. The State agency shall provide to an applicant or recipient an opportunity to contest any adverse disqualified recipient match result pursuant to the provisions of § 273.13.

(iii) Independent verification shall take place separate from and prior to issuing a notice of adverse action—a two-step process. Independent verification for disqualification purposes means contacting the applicant or recipient household or the State agency that originated the disqualification record immediately to obtain corroborating information or documentation to support the reported disqualification information in the IPV database.

(A) Documentation may be in any form deemed appropriate and legally sufficient by the State agency. Such

documentation may include but shall not be limited to, electronic or hard copies of court determinations, signed declarations by individuals waiving the right to an administrative disqualification hearing or consenting to a disqualification, a hearing authority's decision, and the notification of disqualification.

(B) A State may accept a verbal or written statement from another State agency attesting to the existence of the documentation listed in paragraph (f)(11)(iii)(A) of this section.

(C) A State may accept a verbal or written statement from the household affirming the accuracy of the disqualification information, provided such statement is properly documented and included in the case record.

(D) If a State agency is not able to provide independent verification because of a lack of supporting documentation, the State agency shall so advise the requesting State agency or FNS, as appropriate, and shall take immediate action to remove the unsupported information from the disqualified recipient database in accordance with § 273.16(i)(6).

(iv) Once received, the requesting State agency shall review and immediately enter the information into the case record and send the appropriate notice(s) to the record subject and any remaining members of the record subject's food stamp household.

(v) Information from the disqualified recipient database is subject to the disclosure provisions in § 272.1(c) and the routine uses described in the most recent "Notice of Revision of Privacy Act System of Records" published in the **Federal Register**.

\* \* \* \* \*

5. In § 273.11, paragraph (c)(4)(i) is amended by adding a new sentence to the end of the paragraph to read as follows:

**§ 273.11 Action on households with special circumstances.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(i) \* \* \* However, a participating household is entitled to a notice of adverse action prior to any action to reduce, suspend or terminate its benefits, if a State agency determines that it contains an individual who was disqualified in another State and is still within the period of disqualification.

\* \* \* \* \*

6. In § 273.12:

a. paragraph (e)(3) is amended by removing the last six sentences and adding four new sentences in their place



and by adding new paragraphs (e)(3)(i) and (e)(3)(ii); and

b. the introductory text of paragraph (e)(4) is revised.

The additions and revision read as follows:

**§ 273.12 Reporting changes.**

\* \* \* \* \*

(e) \* \* \*  
(3) \* \* \* A State agency may require monthly reporting households to report the change on the appropriate monthly report or may handle the change using the mass change procedures in this section. If the State agency requires the household to report the information on the monthly report, the State agency shall handle such information in accordance with its normal procedures. Households not required to report the change on the monthly report and households not subject to monthly reporting shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting these households' food stamp benefit levels in accordance with either paragraph (e)(3)(i) or (e)(3)(ii) of this section.

(i) The State agency may make mass changes by applying percentage increases communicated by the source agency to represent cost-of-living increases provided in other benefit programs. These changes shall be reflected no later than the second allotment issued after the month in which the change becomes effective.

(ii) The State agency may update household income information based on cost-of-living increase information supplied by a data source covered under the Computer Matching and Privacy Protection Act of 1988 (CMA) in accordance with § 272.13. The State agency shall take action, including proper notices to households, to terminate, deny or reduce benefits based on this information if it is considered verified upon receipt under § 273.2(f)(9). If the information is not considered verified upon receipt, the State agency shall initiate appropriate action and notice in accordance with § 273.2(f)(9).

(4) Notice for mass change. When the State agency makes a mass change in food stamp eligibility or benefits by simultaneously converting the caseload or that portion of the caseload that is affected using the percentage increase calculation provided for in § 273.12(e)(3)(i), or by conducting individual desk reviews using information not covered under the Computer Matching and Privacy Protection Act (CMA) in place of a mass change, it shall notify all households whose benefits are reduced or

terminated in accordance with the requirements of this paragraph, except for mass changes made under § 273.12(e)(1); and

\* \* \* \* \*

7. In § 273.13:

a. paragraph (a)(2) is amended by adding two new sentences to the end of the paragraph;

b. paragraph (b)(1) is revised; and  
c. paragraph (b)(7) is amended by removing the first sentence of the paragraph and replacing it with three new sentences.

The additions and revision read as follows:

**§ 273.13 Notice of adverse action.**

(a) \* \* \*

(2) \* \* \* A notice of adverse action that combines the request for verification of information received through an IEVS computer match shall meet the requirements in § 273.2(f)(9). A notice of adverse action that combines the request for verification of information received through a SAVE computer match shall meet the requirements in § 273.2(f)(10).

\* \* \* \* \*

(b) \* \* \*

(1) The State initiates a mass change through means other than computer matches as described in § 273.12(e)(1), (e)(2), or (e)(3)(ii).

\* \* \* \* \*

(7) A household member is disqualified for an intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member, except as provided in § 273.11(c)(3)(i). A notice of adverse action must be sent to a currently participating household prior to the reduction or termination of benefits if a household member is found, through a disqualified recipient match, to be within the period of disqualification for an intentional Program violation penalty determined in another State. In the case of applicant households, State agencies shall follow the procedures in § 273.2(f)(11) for issuing notices to the disqualified individual and the remaining household members. \* \* \*

\* \* \* \* \*

8. In § 273.16, paragraph (i) is revised to read as follows:

**§ 273.16 Disqualification for intentional program violation.**

\* \* \* \* \*

(i) *Reporting requirements.*

(1) Each State agency shall report to FNS information concerning individuals

disqualified for an intentional Program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be submitted to FNS so that it is received in the month which is no more than 30 days after the date the disqualification took effect.

(2) State agencies shall report information concerning each individual disqualified for an intentional Program violation to FNS. FNS will maintain this information and establish the format for its use.

(i) State agencies shall report information to the disqualified recipient database in accordance with procedures specified by FNS.

(ii) State agencies shall access disqualified recipient information from the database that allows users to check for prior disqualifications.

(3) The elements to be reported to FNS are name, social security number, date of birth, gender, disqualification number, disqualification decision date, disqualification start date, length of disqualification period (in months), type of offense, locality code, and the title, location and telephone number of the locality contact. These elements shall be reported in accordance with procedures prescribed by FNS.

(i) The disqualification decision date is the date that a disqualification decision was made at either an administrative or judicial hearing, or the date an individual signed a waiver to forego an administrative or judicial hearing and accept a disqualification penalty.

(ii) The disqualification start date is the date the disqualification penalty was imposed by any of the means identified in § 273.16(c).

(iii) The locality contact is a person, position or entity designated by a State agency as the point of contact for other State agencies to verify information in a DRS disqualification record supplied by the locality contact's State.

(4) All data submitted by State agencies will be available for use by any State agency that is currently under a valid signed Matching Agreement with FNS.

(i) State agencies shall, at a minimum, use the data to determine the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to

disqualification in another jurisdiction; and

(ii) State agencies shall also use the disqualified recipient database for the following purposes:

(A) To screen all Program applicants prior to certification and at recertification; and

(B) To match the entire database of disqualified individuals against their current recipient caseload at application, and periodically thereafter.

(5) The disqualification of an individual for an intentional Program violation in one political jurisdiction shall be valid in another. However, one or more disqualifications for intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are encouraged to identify and report to FNS any individuals disqualified for an intentional Program violation prior to April 1, 1983. A State agency submitting such historical information should take steps to ensure the availability of appropriate documentation to support the disqualifications in the event it is contacted for independent verification.

(6) If a State determines that supporting documentation for a disqualification record that it has entered is inadequate or nonexistent, the State agency shall act to remove the record from the database.

(7) If a court of appropriate jurisdiction reverses a disqualification for an intentional Program violation, the State agency shall take action to delete the record in the database that contains information related to the disqualification that was reversed in accordance with instructions provided by FNS.

(8) If an individual disputes the accuracy of the disqualification record pertaining to him/her self, the State agency submitting such record(s) shall be responsible for providing FNS with prompt verification of the accuracy of the record.

(i) If a State agency is unable to demonstrate to the satisfaction of FNS that the information in question is correct, the State agency shall immediately, upon direction from FNS, take action to delete the information from the IPV database.

(ii) In those instances where the State agency is able to demonstrate to the satisfaction of FNS that the information in question is correct, the individual shall have an opportunity to submit a brief statement representing his or her

position for the record. The State agency shall make the individual's statement a permanent part of the case record documentation on the disqualification record in question, and shall make the statement available to each State agency requesting an independent verification of that disqualification.

\* \* \* \* \*

Dated: December 1, 2006.

**Nancy Montanez Johner,**  
*Under Secretary, Food, Nutrition and Consumer Services.*

[FR Doc. E6-20765 Filed 12-7-06; 8:45 am]

**BILLING CODE 3410-30-P**

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 104

[Notice 2006-21]

#### **Proposed Statement of Policy Regarding Treasurer's Best Efforts To Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act**

**AGENCY:** Federal Election Commission.

**ACTION:** Proposed statement of policy.

**SUMMARY:** The Federal Election Commission (the "Commission") seeks comments on a proposal to clarify its enforcement policy with respect to the circumstances under which it intends to consider a political committee and its treasurer to be in compliance with the recordkeeping and reporting requirements of the Federal Election Campaign Act, as amended ("FECA"), based on the "best efforts" defense. Section 432(i) of Title 2 provides that when the treasurer of a political committee demonstrates that best efforts were used to obtain, maintain, and submit the information required by FECA, any report or any records of such committee shall be considered in compliance with FECA (and/or chapters 95 and 96 of Title 26). In the past, the Commission has interpreted this section to apply only to a treasurer's efforts to obtain required information from contributors to a political committee, and not to maintaining information or the submission of reports. However, in light of *Lovely v. Federal Election Commission*, 307 F. Supp. 2d 294 (D. Mass. 2004), the Commission intends to apply Section 432(i) to obtaining, maintaining, and submitting information and records to the Commission for the purpose of complying with FECA's disclosure and reporting requirements. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before January 8, 2007. The Commission intends to issue a final policy statement after the close of the comment period.

**ADDRESSES:** All comments must be in writing, must be addressed to Mr. J. Duane Pugh, Jr., Acting Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to [bepolicy@fec.gov](mailto:bepolicy@fec.gov). If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with paper copy follow-up. Mailed comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

**FURTHER INFORMATION CONTACT:** Mr. J. Duane Pugh, Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission's regulation implementing Section 432(i) is promulgated at 11 CFR 104.7. This proposed policy statement makes clear that the Commission's intent is to apply this regulation consistent with the holding of the Federal court in *Lovely*. A political committee and its treasurer, regardless of the type of enforcement action before the Commission (the administrative fines program excepted, see below), will be considered to be in compliance with FECA's requirements if the committee or its treasurer can show that best efforts were made to obtain, maintain, and submit all information required to be reported to the Commission. With respect to 11 CFR 104.7(a), the Commission intends to consider that best efforts were made when the treasurer of a political committee demonstrates that the failure to properly obtain, maintain or submit required information and reports was beyond the control of the committee. The Commission intends to generally consider the following: (1) The actions taken, or systems implemented, by the committee to ensure that required information is obtained, maintained, and submitted; (2) the cause of the