

Domestic Policy Council

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DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****7 CFR Parts 272, 273, 274, and 277**

[Amendment Number]

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:** Proposed rule.

SUMMARY: This rule proposes to amend Food Stamp Program (Program) regulations to implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and subsequent amendments to these provisions made by the Omnibus Consolidated Appropriations Act of 1996, the Balanced Budget Act of 1997, and the Agricultural Research Extension and Education Reform Act of 1998. This action proposes options related to matching activities, fair hearing and recipient services. This action proposes 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 proposes revisions to the requirements for determining alien eligibility and the eligibility and benefits of sponsored aliens, and to require certain transitional housing payments and most State and local energy assistance to be counted as income, exclude the earnings of students under 18 from income, and require proration of benefits following any break in certification.

Other provisions of this proposed action would 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 proposes several changes to existing regulations in response to the President's reform initiative to remove overly prescriptive, outdated, and unnecessary regulatory provisions.

We are also taking this opportunity to add vehicles to the assets which may be covered under the inaccessible resources provisions of the Food Stamp Act of 1977, to clarify what constitutes an adequate notice of adverse action period, 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 Job Training Reform Amendments of 1992.

DATES: Comments must be received on or before May 1, 2000 to be assured of consideration.

ADDRESSES: Comments should be submitted to Patrick Waldron, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305-2805. Comments may also be faxed to the attention of Mr. Waldron at (703) 305-2486. The internet address is: Patrick.Waldron@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Mr. Waldron at the above address or by telephone at (703) 305-2805.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This proposed 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 12372

The Food Stamp Program (Program) is listed in the Catalog of Federal Domestic Assistance under Number 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This 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.

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 or 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 Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

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, 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 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 UMRA.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis" to identify and address any major civil rights impacts the proposed 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, 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 shall 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

This action is needed to implement provisions of Pub. L. 104-193 (PRWORA) 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 of an alien's income in determining the benefits of the rest of the household; (5) require that the full amount of a sponsor's income and resources be counted in determining the eligibility of a sponsored alien; (6) allow State agencies to certify households consisting entirely of elderly or disabled members up to 24 months; (7) exclude

the earnings of students under age 18; (8) make use of a homeless shelter deduction optional; (9) 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; (10) eliminate the exclusion for vendored transitional housing payments for homeless households; (11) allow use of standard amounts in determining self-employment expenses; (12) make optional the issuance of combined allotments to expedited service households that apply after the 15th of the month; (13) allow State agencies to issue partial allotments to households in treatment centers; (14) require proration of benefits following any break in certification; (15) allow State agencies to accept an oral withdrawal from the household for a fair hearing; (16) revise requirements for producing or displaying nutritional education materials; (17) eliminate mandated training standards; (18) eliminate requirement for reviewing and reporting on office hours; (19) revise mail issuance requirements in rural areas; (20) prohibit Federal reimbursement for recruitment activities and recruitment activities from being approved as part of a State agency's optional Outreach plan; (21) make optional rather than mandatory the use of the Income Eligibility and Verification System and the Systematic Alien Verification for Entitlements match programs; and (22) establish ground rules for implementing the Simplified Food Stamp Program (SFSP). In addition, this action is needed to implement a Departmental initiative to revise the current policy on determining the resource value of licensed vehicles.

PRWORA Provisions

Benefits

State agencies will benefit from this rule to the extent that it increases State agency flexibility and simplifies Program requirements.

Costs

The food stamp changes made in this rule would reduce Program costs for the 5-year period Fiscal Year (FY) 2000 through FY 2004 by approximately \$2.75 billion, primarily as a result of the provisions that make many aliens ineligible to participate (section 402) and the provision that requires that most State and local energy assistance be counted as income for food stamp purposes (section 808). The Program realizes smaller savings from the following provisions: 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. The Departmental initiative to revise the treatment of inaccessible resources produces a cost which slightly lowers the total savings from this rule. The savings from the remaining provisions in the rule are negligible; therefore, we will not discuss them 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 the Agricultural Research Extension and Education Reform Act of 1998 (AREERA) after admission; lawful permanent residents who have earned 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 in Canada 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 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 savings would have been \$500 million. We estimate that in 1998, approximately 790,000 participants lost eligibility with an average benefit loss of \$75 a month and

another 285,000 people remained eligible but lost an average of \$15 a month. About 685,000 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 \$15 per month. This is because of economies of scale in the allotment tables which are by household size, e.g., 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 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 two years, it is anticipated 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 210,000 legal aliens, costing an additional \$185 million in 2000 and \$775 million for the 5-year period FY 2000–FY 2004.

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 \$0 million for FY 2000 and \$20 million for FY 2000–FY 2004. These estimates take into account current State practices and an expected shift of some States from the first option.

As a result, the combined effect of these changes will cause savings to fall through FY 2002, and then rise after that with the expected increases in the average benefit. After accounting for increased naturalization, AREERA, and changes in the counting of PRWORA-ineligible aliens' income being implemented starting in FY 2001, savings are estimated at \$315 million in FY 2000, \$320 million in FY 2001, \$360 million in FY 2002, \$380 million in FY 2003, and \$410 million in FY 2004. Savings related to the alien provisions for the 5-year period FY 2000–FY 2004 are estimated to be \$1.785 billion.

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 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 \$89 per month. FY 2000 savings are estimated at \$5 million and a 5-year savings of \$25 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 savings of \$210 million for FY 2000 and a 5-year savings 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. 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 savings of \$10 million in FY 2000 and a 5-year savings 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 proposed 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 proposed 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 proposed 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. Providing direct entitlement to a heating or cooling standard to households in private rental housing would eliminate the need for the State agency to verify receipt of LIHEAP, which has been problematic for State agencies and households.

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 60,000 people were reduced in 1998 for an average loss of \$12 a month, and 783 people lost eligibility for an average monthly loss of \$31. The total savings were estimated 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 five years, States that account for 28 percent of total benefit issuance will have opted for required use of the SUA. Under these assumptions, total savings are \$20 million in FY 2000 and \$175 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 would allow 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 select 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. Savings are estimated at \$5 million for FY 2000 and \$25 million for FY 2000–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, benefits would be prorated if there is any break in certification. State agencies are affected 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 savings 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 Initiative—Inaccessible Resources and Vehicles

Benefits

This proposed rule would allow 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. State agencies could benefit from simplification of procedures as vehicles in which the household has little equity are excluded from consideration as resources.

Costs

This provision will revise current procedures to include some vehicles under the inaccessible resources provision. Equity in a vehicle of less than one-half of the applicable resource standard for the household will exempt the vehicle from consideration as a resource. This provision has negligible costs in FY 2000. In FY 2001, the

estimated cost is \$55 million and the five year cost is \$430 million.

Paperwork Reduction Act

The information collection requirements described in § 273.2, § 273.14(b), and § 273.21 of this proposed 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 proposed 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. 0584-0096. See Vol. 64 FR 472, dated January 5, 1999, for a description of the information collection requirements and request for comment.

The information collection requirements governing State agency administration and management described in this proposed 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 Food Stamp Program. Therefore, current reporting and record keeping burden, previously approved by OMB and assigned control numbers 0584-0064, 0584-0083, and 0584-0350, either remains the same or there is no longer an information collection burden associated with the provisions discussed in the preamble to this rule. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden may be sent to: U.S. Department of Agriculture, Clearance Officer, OCIO, room 404-W, Washington, DC 20250 and to Wendy A. Taylor, OIRM, Office of Management and Budget, Washington, DC 20503.

Background and Discussion of Proposed Regulatory Changes

On August 26, 1996, Pub. L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter referred to as "PRWORA") was enacted. PRWORA contained numerous provisions amending the Food Stamp Act of 1977 (hereinafter referred to as "the Food Stamp Act" or "the Act"). The PRWORA contained several provisions designed to increase State agency flexibility in administering the Food Stamp Program—especially in the area of household application and certification for Program benefits and to

encourage individuals to take personal responsibility for their own welfare. These provisions are addressed in this proposal. In addition, this rule addresses provisions of PRWORA relating to the eligibility of aliens which did not amend the Act. State agencies were notified in an agency memorandum that they were required to implement the mandatory provisions upon enactment for applicant households and at recertification for participant households without waiting for formal regulations.

For those sections of the regulations we are proposing to amend as a result of PRWORA, we are also taking this opportunity to propose regulatory changes in response to the President's regulatory reform initiative to remove overly prescriptive, outdated and unnecessary provisions of the regulations.

The requirements of each provision of PRWORA addressed by this proposal and the proposed regulatory changes are discussed in the remaining pages of this preamble. Those changes being made in response to the President's regulatory reform initiative are also identified and discussed.

Part 272—Requirements for Participating State Agencies

Operating Guidelines and Forms—7 CFR 272.3

The PRWORA contains several provisions offering State agencies optional courses of action in their administration of the Food Stamp Program. These options will be included in Program regulations at the appropriate location and are discussed later in this preamble. We propose that the options chosen by the State agencies be included in the State's Plan of Operation. However, we do not intend to make a conforming amendment at 7 CFR 272.3 as the current regulation sufficiently addresses this requirement. Under current rules at 7 CFR 272.3, when a State agency implements rule changes, including any optional provisions, the State agency is required to provide written procedures or guidelines to State staff. These written procedures or guidelines are also required to be submitted to FNS for review and comment at the same time they are issued to State staff.

The optional provisions referred to in the previous paragraph include State agency options to: (1) Issue separate or combined allotments to expedited service households that apply for benefits after the 15th of the month as is currently allowed for non-expedited service households; (2) have a homeless

shelter deduction; (3) require mandatory utility allowances; (4) certify households in which all members are elderly or disabled for 24 months; (5) determine the benefits of a household containing an ineligible alien in accordance with 7 CFR 273.11(c)(1) or (c)(2); (5) make exceptions to using direct mail issuance in rural areas; and (6) accept an oral withdrawal from the household for a fair hearing request. The proposed provisions for including these options in the regulations are discussed in detail below in order of the regulatory citation.

State Employee Training—7 CFR 272.4(d)

Section 836 of PRWORA deleted all Federal requirements for State employee training. Prior to the enactment of PRWORA, Section 11(e)(6) of the Food Stamp Act (7 U.S.C. 2020(e)(6)) required State agencies to provide continuing training for all personnel involved with certification actions. The Food Stamp Act further provided State agencies with the option of contracting for training for persons who work with volunteers or nonprofit organizations that provide outreach or eligibility screening to persons who may be potentially eligible for food stamp benefits. The current rules at 7 CFR 272.4(d) include these provisions and require State agencies to provide training for all hearing officials and performance reporting system reviewers. Under current rules, FNS is also required to review the effectiveness of State agency training based on information obtained from Agency reviews and other sources.

To implement Section 836 of PRWORA, we are proposing to delete all the mandatory training requirements at 7 CFR 272.4(d). On the basis of their own experience, States will determine the training needs necessary to develop staff skills that assure efficient and effective program administration. FNS fully supports State training efforts and believes State agencies will maintain quality training programs as an essential element of effective Program administration. Deleting 7 CFR 272.4(d) reflects the change in the law.

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. The corresponding rules at 7 CFR 272.4(g) specify that State agencies are responsible for determining the hours that food stamp offices are open and that, at least once annually, State agencies must review the hours of operation and maintain the results of the reviews for review by FNS.

To implement Section 848 of PRWORA, we are proposing to make clear that State agencies are responsible for setting the hours of operation for their food stamp offices. However, we propose that in setting office hours State agencies are expected to take into account the special needs of the people they expect to serve. We ask them to be especially sensitive to the needs of households who contain working persons because these individuals may not be able to leave work to go to the food stamp office unless the food stamp office is open during non-traditional times such as evenings or weekends. In deciding what office hours will be offered, State agencies need to consider section 11(e)(2)(A) of the Food Stamp Act, as amended by section 835 of PRWORA, which requires them to accommodate special needs. In singling out the working poor, we recognize that the Program serves a vital role in helping families move to self-sufficiency and that even people working full-time at minimum wages and taking advantage of the Earned Income Tax Credit may continue to fall below the poverty level without food stamp assistance. In commenting on this provision, we would appreciate any recommendations on how eligible or potentially eligible working individuals can best be assured adequate access to the Program.

The proposed revisions at newly redesignated § 272.4(f) no longer require State agencies to assess or report on office hours. It is expected that they will do such assessment on their own without the need for a regulatory requirement.

Nutrition Education Materials—7 CFR 272.5(b)

Prior to the enactment of PRWORA, Section 11(e)(14) of the Food Stamp Act (7 U.S.C. 2020(e)(14)) 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.

Section 835 of PRWORA deleted Section 11(e)(14) of the Food Stamp Act. The removal of this language requiring FNS to supply nutrition education materials to States in no way implies a lesser commitment to nutrition education in the FSP by FNS. In fact, it is our intention to strengthen and improve nutrition among low-income households through the vigorous promotion of nutrition education in the Program. Our commitment to the importance of nutrition education for food stamp recipients reflects the mandate of the Program which is, as specified by Section 2 of the Food Stamp Act, to “ * * * safeguard the health and well-being of the nation's population by raising levels of nutrition.” (7 U.S.C. 2012) We will continue to expect States to help recipients use food stamp benefits to maximum nutritional advantage. States' growing levels of commitment to nutrition education and its importance are supported by the increasing number of States that have approved State plans for optional nutrition education over the past several years. As of Fiscal Year 1999, 46 State agencies have nutrition education plans and have committed over \$70 million in non-Federal resources to FSP nutrition education. It is expected in future years that additional States will become actively involved in nutrition education delivery. FNS will continue to encourage active State agency commitment to the delivery of nutrition education to FSP clients.

In response to changes in PRWORA, we are proposing to replace paragraphs 7 CFR 272.5(b)(1)(i), 7 CFR 272.5(b)(1)(ii), and 7 CFR 272.5(b)(1)(iii) with a new paragraph (b)(1). The proposed paragraph would specify FNS' commitment to encourage State agencies to develop Food Stamp Nutrition Education Plans as allowed under current rules at 7 CFR 272.2(d)(2). While most State agencies have a Nutrition Education Plan, FNS encourages all State agencies to seriously consider developing such plans so that FSP clients have access not only to food stamps, but also to nutrition education that promotes the effective and economical use of food stamps for healthier diets and healthier lives.

Paragraph 7 CFR 272.5(b)(1)(iv), which discusses the Expanded Food and Nutrition Education Program (EFNEP), would be redesignated as 7 CFR 272.5(b)(2). By law, State agencies must continue to encourage food stamp participants to participate in EFNEP and allow EFNEP personnel to distribute nutrition education materials or talk to participants in local food stamp offices.

Paragraphs (b)(2) and (b)(3), which reiterate certain State agencies' responsibilities, would be redesignated as paragraphs (b)(3) and (b)(4).

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

Currently, 7 CFR 272.8 and 7 CFR 273.2 require State agencies to maintain and use an income and eligibility verification system (IEVS) to request and to exchange wage and benefit information on Food Stamp applicants and recipients from specified data sources. The provisions of 7 CFR 272.8 also require that, prior to requesting or exchanging data, State agencies enter into data exchange agreements with the data source agencies and that these agreements be included in the State Plan of Operation. The State Plan attachment details the State agency's IEVS targeting methods, number of information items acted upon, and a cost-benefit analysis justification. The regulations at 7 CFR 272.11 require State agencies to participate in the Immigration and Naturalization Service's Systematic Alien Verification for Entitlement (SAVE) Program.

Section 840 of PRWORA amended Section 11(e)(18) of the Food Stamp Act (7 U.S.C. 2020(e)(18)) to make IEVS and SAVE State options. Consequently, we are proposing in this rule to remove the requirement that State agencies operate either an IEVS or a SAVE system. We believe that many States will decide to continue to avail themselves of these opportunities to match their Food Stamp case files against other Federal data sources. Furthermore, it is in a State's best interest to utilize wage, income, and immigration status information as there is a Food Stamp error reduction and cost avoidance potential in the use of these matches. Therefore, since in all likelihood many States will wish to continue to take advantage of these matching opportunities, these proposed regulations would provide a maximum amount of latitude to States to use IEVS and SAVE to the best advantage of the State and with minimum Federal oversight and record keeping requirements. These proposed regulations would require only that State agencies which opt to use IEVS and SAVE observe the requirements of the data exchange agreements with agencies from which data will be obtained or exchanged. Current requirements to report targeting methods and provide cost-benefit justification would be rescinded in this

rule. This proposed rule also eliminates requirements for meeting follow-up time frames. States should be aware, however, that quality control reviews will continue to use data obtained from IEVS and SAVE systems as a case analysis tool.

The proposed amendments to the current regulations are incorporated under 7 CFR 272.8, 7 CFR 272.11 and 7 CFR 273.2.

Part 273—Certification of Eligible Households

Application Processing—7 CFR 273.2 (a) Through (j)

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) 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 coupons to eligible homeless individuals.

While the language of amended Section 11(e) encourages personal responsibility and provides more State agency flexibility, it retains a few 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.

Pursuant to Section 11(e) of the Act, as amended by Section 835 of PRWORA and the Department's response to the President's reform initiative to remove overly prescriptive, outdated, and unnecessary provisions of regulations, we are proposing to amend 7 CFR 273.2, "Application Processing." The changes that would be made are discussed in detail in the following paragraphs of this preamble. Some minor editing changes would also be made but are not discussed in detail.

Title of Part 273.2

The rulemaking would change the title of 7 CFR 273.2 from "Application processing" to "Office operations and application processing."

General Purpose—7 CFR 273.2(a)

A new paragraph (a) would be added and titled "Office operations." Current paragraphs (a), (b), and (c) of 7 CFR 273.2 would be revised and combined into a single new paragraph (b).

New paragraph (a) would incorporate the language contained in amended Section 11(e)(2)(A) requiring State agencies to establish their own procedures governing office operations 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, and households in areas in which a substantial number of members of low-income households speak a language other than English. It would also incorporate the requirements that the State agency provide timely, accurate, and fair service as required by Section 835 of PRWORA. This revised paragraph would also clarify that a State agency may not impose a processing requirement for another assistance program as a condition of food stamp eligibility. This is in accordance with Section 11(e)(5) of the Act (7 U.S.C. 2020(e)(5)) which provides that the State agency may not impose any additional eligibility requirements. Eligibility for food stamps must be based solely on the Act and food stamp regulations and not on another program's requirements. Pursuant to the requirement for fair service, we have

added a sentence that 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.

State agencies are reminded that pursuant to current regulations at 7 CFR 272.3(b), operating procedures or guidelines established by the State agency are required to be submitted to FNS as part of the State's Food Stamp Plan of Operation.

Food Stamp Application—7 CFR 273.2(b) and (c)

New paragraph (b) would be titled "Application processing." The introductory text for this paragraph would include language from the first sentence of current paragraph (a) which defines the application process to include filing of an application, being interviewed, and providing verification. The second, third, and fourth sentences of current paragraph (a) would be removed. The second sentence now requires State agencies to act promptly on applications and provide food stamp benefits retroactive to the month of application for those households determined eligible. The third sentence provides that expedited service must be available. These requirements are addressed in separate paragraphs under this section; therefore, there is no need to repeat them here. The fourth sentence simply introduces the rest of the provisions under 7 CFR 273.2(a) and is unnecessary.

New paragraph 7 CFR 273.2(b)(1) would be titled "Application design" and would include the requirement of amended Section 11(e)(2)(B)(ii) that State agencies design their own application forms. Pursuant to Section 11(e)(2)(C), the application form may include the electronic storage of information and the use of electronic signatures. 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 would be removed because Section 835 eliminated the requirement that State agencies use a Federally-designed application.

Proposed paragraph (b)(1) would provide that the food stamp application may be designed separately or included in a State-designed multi-program application. As discussed later in this preamble under the section entitled "PA, SSI, and GA categorical eligibility—7 CFR 273.2(j)," PRWORA eliminated *mandatory* joint application processing for certain households. However, under Section 11(e), State agencies are not prohibited from

continuing to use joint processing. If they do, the food stamp eligibility of jointly processed cases would continue to be based solely on food stamp eligibility criteria contained in the Act. The benefit levels of all households would also continue to be based solely on food stamp criteria.

New paragraph 7 CFR 273.2(b)(2) would be entitled "Application contents." Section 835 of PRWORA amended section 11(e) of the Act to remove the list of mandatory application content requirements. This mandatory list currently appears at 7 CFR 273.2(b). New paragraph (b)(2) would replace this list with a general requirement that the application must contain all necessary information to comply with the Act and regulations. Notices that are required to be given to households by the Act may be included on the application itself or a document to accompany the application.

Departmental regulation 4300-3, dated February 25, 1998, requires that the following nondiscrimination statement appear on the application itself even if a joint program application is being used:

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, sex, religion, national origin, or political beliefs. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

"To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

State agencies are reminded that Section 835 only affected application content requirements mandated by the Act. Some of the other notices appearing on the former model food stamp application form were included to ensure compliance with other laws or to ensure a stronger case against Program violators. The notices that are still required by other Federal laws include: (1) Collection of racial and ethnic data and notification to applicants that disclosure of such information is voluntary; (2) notification to applicants that the Act requires collection of the social security numbers of household members and that the Privacy Act requires notification of the intended use of the numbers; and (3) notification to

applicants of the use of IEVS, participation in the SAVE program, and other computer matching systems as governed by the Deficit Reduction Act and the Computer Matching and Privacy Protection Acts. These requirements are discussed at greater length in 7 CFR 273.2(f). Use of the IEVS and SAVE systems were made optional by Section 840 PRWORA; but if a State uses these systems, they must notify applicants pursuant to the Computer Matching and Privacy Protection Acts. As stated earlier, prior to PRWORA, State-designed applications were required to be modeled after the Federally-designed application; therefore, all State-designed applications were in compliance with these other requirements. We would include in new paragraph (b)(2) language necessary to ensure that State agencies continue to include this information on State-designed applications even though the applications are no longer subject to FNS approval.

We are proposing that a new statement be included on State-designed applications to ensure specific compliance with the Privacy Act as it relates to administrative offset programs as described in sections 3716 and 3720A of title 31 U.S.C. and section 5514 of title 5 U.S.C.

New paragraph 7 CFR 273.2(b)(3) would be entitled "Jointly processed cases" and would provide that 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. The proposed paragraph would continue to require joint applications to be processed for food stamp purposes in accordance with food stamp procedural, timeliness, notice, and fair hearing requirements. The proposed rule would continue to provide that 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. Section 835 of PRWORA added an exception to this prohibition for disqualifications as a penalty for failure to comply with a public assistance program rule or regulation. We have published a separate proposed rule (64 FR 70920) to address disqualifications as a penalty

for failure to comply with a public assistance program rule or regulation. The proposed regulation provides that 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 their food stamp eligibility determined based on the joint application in accordance with the food stamp processing time frames for expedited service and normal processing time frames from the date the joint application was initially accepted by the State.

Pursuant to this rulemaking, new paragraph (c) would be entitled "Filing an application" and new paragraph (c)(1) would be entitled "Filing process." This paragraph contains the requirement appearing in the first sentence of current paragraph (c)(1) regarding the manner in which applications can be submitted. The new language clarifies that the application may be submitted by facsimile transmission as well as in person, through an authorized representative, or by mail. The new language also 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. New paragraph (c)(1) would also contain 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. The proposed language of new paragraph (c)(1) would also include PRWORA requirement which allows the use of electronic signatures. The new paragraph specifically provides 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.

New paragraph 7 CFR 273.2(c)(2) would be entitled "Household's right to file." It would provide that the State agency must make food stamp applications readily accessible to all potentially eligible households or to anyone who requests one which is currently required by 7 CFR 273.2(c)(3). The proposed paragraph would contain the requirement in current 7 CFR 273.2(c)(2)(i) that the State agency shall provide an application in person or by mail to anyone who requests one. The requirement in current paragraph

(c)(2)(i) for mailing an application on the same day as initial contact by the household is modified to require mailing by the next business day. The proposed paragraph would contain the requirement in the fourth sentence of 7 CFR 273.2(c)(1) that a household be allowed to file an application on the same day it contacts the food stamp office during office hours.

The first sentence of 7 CFR 273.2(c)(4) provides that the State agency shall post signs in the certification offices which explain the application processing standards and the right to file an application on the day of initial contact. New paragraph (c)(2) would require State agencies to 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. State agencies would be required to 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. For purposes of this provision "encourage" does not mean recruitment or persuasion. It means that State agencies have a responsibility to inform individuals who express an interest in food assistance, or express concerns which indicate food insecurity, about the Food Stamp Program and their right to apply. We believe these requirements are necessary under Section 835 of PROWRA which requires fair, accurate, and timely service, and that applicant households be permitted to apply the same day they first contact the food stamp office in person. It is very important to notify households through some means of these rights because benefits are provided to eligible households retroactive to the date of application.

The second sentence of current 7 CFR 273.2(c)(4) requires State agencies to include information on the application form that explains the processing standards and the right to file an application on the day of initial contact. As explained above, State agencies are no longer required to have this information on the food stamp application form.

The language appearing in the fifth sentence of current paragraph (c)(1) requiring the State agency to advise households that they do not need to be interviewed before filing an application as long as it is signed by the applicant or an authorized representative would be removed. We do not believe this

provision is necessary if the State agency informs households of the right to file an application on the first day they contact the food stamp office.

New paragraph (c)(2) would address the handling of applications filed at the wrong certification office. The proposed rule would 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. The proposed rule would contain the requirement in the second sentence of 7 CFR 273.2(c)(2)(ii) that if an application is received at an incorrect office, the State agency shall advise the household of the address and telephone number of the correct office. However, this proposal would modify the requirement in the third sentence that the State agency offer to forward the application to the correct office that same day. We would require the State agency to forward the application to the correct office not later than the next business day. The third sentence in 7 CFR 273.2(c)(2)(ii) that requires the State agency to inform the household that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office would be removed, because this information should be included on the sign or other advisory information required above. The fourth sentence in 7 CFR 273.2(c)(2)(ii) that requires State agencies to forward applications mailed to the wrong office to the appropriate office the same day would be revised to require mailing by the next business day. As noted above, if an application is received at the incorrect office, the State agency would be required to inform the household of the address and telephone number of the correct office.

Section 7 CFR 273.2(c)(iii) provides that in States that have elected to have Statewide residency, the application processing time frames begin when the application is filed in any food stamp office in the State. This provision would be removed as unnecessary, because any office in the State would be considered the correct food stamp office.

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 would be removed. State agencies have developed many ways of maintaining applications, through paper records and through automated systems. Depending on the system used by a State agency, an alternate method of

identifying the date an application was received may be more appropriate than the method specified in the regulations. We believe that State agencies are in the best position to decide the method for establishing the date of application. Removing the requirement to annotate the application does not eliminate a State agency's responsibility to process an application within 30 days of its receipt.

We would retain in new paragraph (c)(4) the requirement in current paragraph (c)(5), "Notice of required verification," that State agencies 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. The requirement in current paragraph (c)(5) that State agencies assist in the verification processing would be retained, but modified, in the new provision. While PRWORA eliminated the specific requirement to assist in obtaining verification, it substituted a general requirement that State agencies address the requirements of "special needs" households in their administration of the Program. Such households include, but are 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. We do not believe that PRWORA amendment should have the result of leaving households with limited mobility, transportation difficulties, or limited English language capabilities to complete verification requirements totally without State agency assistance. Accordingly, the State agency must continue to inform such households of the State agency's responsibility to assist the household in obtaining required verification, providing the household is cooperating with the State agency. The specific requirement in current paragraph (c)(5) that the State agency comply with bilingual requirements would not be included in the new provision, because a general requirement to comply with bilingual standards is set forth elsewhere in current regulations (7 CFR 272.4(b)), and it is not necessary to repeat the requirement here. With these changes, current paragraph (c)(5) would be removed.

Current 7 CFR 273.2(c)(6), "Withdrawing an application," would

be redesignated as the new paragraph (c)(3).

Household Cooperation—7 CFR 273.2(d)

Current 7 CFR 273.2(d) contains provisions relative to household cooperation in the application process and quality control reviews. We propose to retain most of the language of current paragraph (d)(1) and all of the contents of current paragraph (d)(2). The changes to paragraph (d)(1) we would make are discussed below. Paragraph (d)(1) would be titled "Cooperation with application process." We would remove the example of "refusal to cooperate" appearing in current paragraph (d)(1) as unnecessary. There are numerous ways that a household could refuse to cooperate, and the example is not definitive. While we are removing the example, we nonetheless expect State agencies to continue to determine non-cooperation in accordance with the standard set forth in the regulation. If a household believes that it has been denied unjustly for refusal to cooperate, it retains the right to request a fair hearing.

We would 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. It is not our intent that State agencies routinely require households to appear for an interview to resolve discrepancies found during a household's certification period. However, we do believe State agencies should have the flexibility to require an in-office interview when the State agency has new information which calls into question the household's current eligibility or level of benefits. For example, a State agency may discover information indicating that a household is not reporting earned or unearned income, which would affect the household's eligibility and benefit level and raise questions about whether the failure to report is an intentional Program violation. Refusal to appear for the interview would result in the household's case being closed. In all cases, where the State agency determines that benefits will be reduced or terminated, the household is entitled to receive a notice of adverse action, unless exempt from such notice, pursuant to 7 CFR 273.13.

We would remove the last two sentences of current paragraph (d)(1). 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. As a result of this change, the last sentence of current paragraph (d)(1) is unnecessary and would be removed. That sentence describes certain individuals who are not considered "outside" the household for the purpose of the existing provision. Removal of these provisions does not change current policy because refusal to cooperate continues to be defined as refusal by a household member.

Interviews—7 CFR 273.2(e)

Current 7 CFR 273.2(e) requires households to participate in a face-to-face interview with a caseworker at the time of certification and each recertification. Prior to PRWORA, the Act did not contain an explicit provision requiring food stamp applicants to be interviewed. This has always been a regulatory requirement. 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. The Department believes that Congress did not seek to eliminate the Program's requirement for conducting in-office interviews; rather, by removing the in-office interview waiver language in the Act, Congress provided State agencies, rather than households, the flexibility to determine when the in-office interview should be waived. In consideration of the removal of the waiver language and in the spirit of PRWORA, the Department believes it is appropriate to reevaluate current policy and determine whether or not to continue requiring face-to-face interviews. A face-to-face interview affords an eligibility worker the best opportunity to explore and resolve questionable or unclear information on the application or other documents presented by the household in support of its application for benefits in order to make an informed eligibility determination. The face-to-face interview also provides an opportunity for households to ask questions to help them better understand the many facets of the Program and to obtain clarification of questions on the application.

At the same time, we want to allow some flexibility in this area. Therefore, after careful consideration, the Department is proposing 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 would eliminate the requirement to conduct a face-to-face interview at the time a recertification if it occurs during the 12-month period since the last face-to-face interview. Conforming amendments would be made to the recertification provisions of existing rules at 7 CFR 273.14. Proposed provisions regarding State agency waiver of the face-to-face interview are discussed later in this section of the preamble.

In response to the President's regulatory reform initiative to remove outdated, unnecessary and overly prescriptive rules, we are also proposing additional changes to current interview requirements, as discussed below. The proposed changes are also consistent with the spirit of PRWORA to provide more State agency flexibility in the area of household application and certification.

Current 7 CFR 273.2(e)(1) requires that interviews be held in the food stamp office or other certification site. We propose to remove this requirement. State agencies could continue to conduct all interviews in a food stamp office or could choose to conduct interviews in other mutually convenient locations, including the household's home. If the interview is conducted in the household's residence, the proposal would continue to require that such interview be scheduled in advance with the household.

We would also remove the sixth and eighth sentences of paragraph (e)(1). These sentences address the need for privacy and confidentiality of the household's circumstances. The seventh sentence also addresses the need for privacy; therefore, the sixth and eighth sentences are repetitive and unnecessary.

The provision would continue to provide that the person interviewed may be the head of the household, spouse, or another responsible household member, or an authorized representative and that the applicant may bring any person to the interview he or she chooses, and that the applicant's right to privacy must be protected during the interview. The proposal also clarifies that the interview may be conducted separately or jointly with an interview for another assistance program.

Current 7 CFR 273.2(e)(2) addresses 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) to provide State agencies the authority to waive an interview without first being requested by a household. Under this proposal, the State agency must waive the in-office face-to-face interview in favor of a telephone interview or announced home visit for household hardship cases. The proposal would allow the State agency to determine what constitutes hardship cases. State agencies could also waive the in-office interview in favor of a telephone interview or announced home visit for households with no earned income if all of its members are elderly or disabled. This change is consistent with existing waiver authority at 7 CFR 273.14 which allows the State agency to waive the in-person interview at recertification for such households. The State agency would continue to be required to grant a face-to-face interview to any household that requests one.

We would remove 7 CFR 273.2(e)(2)(i) regarding State agency options to conduct telephone or announced home visit interviews as this policy is incorporated in the new introductory language of paragraph (e)(2) discussed above. We would also remove current paragraphs (e)(2)(ii) and (iii) as unnecessary and overly prescriptive. Paragraph (e)(2)(ii) provides that the waiver of the face-to-face interview does not exempt the household from the verification requirements. Paragraph (e)(2)(iii) provides that the waiver of the face-to-face interview must not affect the length of the household's certification period.

We would remove current paragraph (e)(3). The first sentence requires the State agency to schedule all interviews as promptly as possible to insure that eligible households receive an opportunity to participate within 30 days after the application is filed. We would remove this sentence and add a sentence to remind State agencies that they should schedule interviews so as to allow the household at least 10 days to provide required verification before the end of the 30 day processing period. The remainder of current paragraph (e)(3) requires State agencies to schedule a second interview if a household fails to attend the first scheduled interview. Under the waiver authority in 7 CFR 272.3(c), we have granted waivers to the

requirement that State agencies schedule a second interview if the applicant fails to attend the first scheduled interview. 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. 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 do not want to mandate that the State agency be responsible for rescheduling a missed interview. State agencies that want to may continue to do this. To be consistent with the waiver approvals noted above, we are adding a requirement to proposed paragraph (c)(1) that State agencies advise households that they may reschedule any missed appointment.

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. Some information must be verified in all cases and other information must be verified if questionable. The mandatory verification requirements are specified in paragraph (f)(1), and the verification requirements for questionable information are specified in paragraph (f)(2).

In response to the President's regulatory reform initiative, we propose to simplify the current provisions of paragraphs (f)(1) and (f)(2) by removing repetitive information and overly prescriptive requirements for use of specific documents wherever possible. We also propose to change the order of the subparagraphs in paragraph (f)(1) so those that relate to financial criteria will be grouped together toward the end of the paragraph. Current paragraph (f)(1)(i) regarding gross nonexempt income would be renumbered (f)(1)(vi). Current paragraph (f)(1)(ii) regarding alien status would be revised and renumbered as (f)(1)(iv).

Section 402 of PRWORA and Sections 503 through 509 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*—7 CFR 273.4. Section 432 of PRWORA also affects the requirements for verification of alien eligibility. Section 432(a) of PRWORA required the

Attorney General to publish regulations not later than 18 months after the date of enactment of PRWORA (August 22, 1996) providing requirements for verifying that a person applying for a Federal public benefit is a qualified alien and is eligible to receive the benefit. Section 504 of the Omnibus Consolidated Appropriations Act (OCAA), Pub. L. 104-208 amended section 432(a) to provide that by the same date the Attorney General, in consultation with the Secretary of Health and Human Services (HHS), must also establish procedures for a person applying for a Federal public benefit to provide proof of citizenship. Section 5572(a) of the Balanced Budget Act of 1997, Pub. L. 105-33 provides that not later than 90 days after enactment of the law, the Attorney General, in consultation with HHS, must issue interim guidance for verifying qualified alien status and eligibility for a Federal public benefit. The interim guidance developed by the Department of Justice (DOJ) was 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. The proposed rule has been published in the *Federal Register*, 63 FR 41662, August 4, 1998. Our proposed rule references the forthcoming final rule. Relevant changes to alien verification procedures made by DOJ's final rule will be incorporated into the final version of this 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 would remove current paragraphs (f)(1)(ii)(B), (C), and (D), which mandate the types of documents that must be used for verification. State agencies may refer to the interim guidance developed by DOJ, Program policy interpretations, and procedures developed by the Social Security Administration (SSA) for obtaining work history information. These sources provide examples of verification, including verification provided by the household, which State agencies may use in developing their own verification requirements.

Current 7 CFR 273.2(f)(1)(ii)(A) which requires the household to provide verification that each alien is eligible

would be removed. In the introductory paragraph (f)(1)(iv), we would provide that the immigration status of all aliens and other factors relevant to the eligibility of individual aliens must be verified 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 would also 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). The last sentence of current paragraph (f)(1)(ii)(G) would be removed because the reference to 7 CFR 273.11(c) is unnecessary. With these changes, current paragraph (f)(1)(ii)(G) would be eliminated. In regard to expedited service, the eligible status of aliens would have to be determined prior to certification, but verification could be postponed in accordance with paragraph (i).

Pursuant to the President's regulatory reform initiative, the first two sentences and the last sentence of current paragraph (f)(1)(ii)(E) would be removed 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-Immigration and Naturalization Service (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.

New paragraph (f)(1)(iv)(B) would be added 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 verification of eligibility based on 40 qualifying quarters of work must be obtained before the alien can be certified 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 it can be documented 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 propose to permit immigrants to receive food stamp benefits for a maximum period of 6 months. We emphasize 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 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.

Current 7 CFR 273.2(f)(1)(ii)(F) would be removed. That paragraph specifies that alien applicants must be provided sufficient time (at least 10 days) to provide verification and that benefits must be provided timely. The time period for providing verification would be included in the introductory text of paragraph (f).

Current paragraph (f)(1)(iii) would be renumbered (f)(1)(x), and the first sentence would be revised to conform to Section 809 of PRWORA which amended Section 5(e) of the Act, 7 U.S.C. 2014(e), to allow State agencies

to mandate use of standard utility allowances. The revised paragraph would require that actual utility costs be verified if they are used. Current paragraphs (f)(1)(iv) regarding the verification of medical costs would be renumbered (f)(1)(vii).

Current paragraph (f)(1)(v) regarding verification of social security numbers (SSN) would be revised and renumbered (f)(1)(iii). The third sentence of current paragraph (f)(1)(v) requires that once an SSN is verified, the State agency must permanently annotate in the case file the verification provided by the household to prevent unnecessary reverification. Section 835 of PRWORA amended Section 11(e) of the Act to remove the prohibition against requiring a household to submit additional verification for information already currently verified. Therefore, we would remove this requirement currently found in paragraph 273.2(f). We would make the fourth sentence of current paragraph (f)(1)(v), which provides that the State agency must accept as verified an SSN which has been verified by another program participating in the Income Eligibility and Verification System (IEVS), optional except for households which are categorically eligible. We believe this provision is overly prescriptive, and State agencies should have the flexibility to determine if they want to continue such verification policies. We would remove the last two sentences of current paragraph (f)(1)(v) which instruct State agencies on what to do if an individual is unable to provide an SSN or does not have an SSN. These procedures are established in 7 CFR 273.6 and do not need to be repeated here. We would include a reference to 7 CFR 273.6 instead. We would add the requirement in 7 CFR 273.2(f)(8)(i)(B) to verify newly obtained SSNs at recertification.

Current 7 CFR 273.2(f)(1)(vi) would be revised and renumbered (f)(1)(ii). This paragraph requires the verification of residency, specifies that to the extent possible residency must be verified in conjunction with the verification of other information, and includes examples of sources of verification. We would remove the requirement that residency be verified in conjunction with other information and remove the examples. The list is not inclusive, and the eligibility worker is in the best position to know whether the other documentation provided is sufficient to verify residency. We would also remove the last sentence in current paragraph (f)(1)(vi) which specifies that no durational requirement may be established. This requirement is already

established in 7 CFR 273.3 and does not need to be repeated here.

Current paragraph (f)(1)(vii) specifies the requirements for verifying identity and includes a list of examples of acceptable documentary evidence. We would renumber it as (f)(1)(i) and remove the list of examples of acceptable documentary evidence. State agencies may establish their own documentation standards, provided those standards do not exceed the general standards provided in this paragraph.

Current paragraph (f)(1)(viii) would be renumbered as (f)(1)(v). Current paragraph (f)(1)(viii)(A) specifies the types of documentation required to verify disability as defined in 7 CFR 271.2. We would remove the detailed listing of required documentation. Some of the documentation listed is self-evident and does not need to be regulated. Other documentation requirements that may be necessary are best left to the discretion of the eligibility worker. In current paragraph (f)(1)(viii)(B), we would make some minor editing changes for clarity.

Current paragraph (f)(1)(ix) contains provisions regarding verification required when a household reapplies after being disqualified for refusal to cooperate with quality control (QC) reviewers. We would renumber this paragraph (f)(1)(xii) and add the title "Refusal to cooperate with QC reviewer" to the paragraph for consistency.

We would remove current paragraph (f)(1)(x). The requirement in this paragraph to verify household composition if it is questionable is not necessary since paragraph (f)(2) requires verification of all questionable information. The remainder of the text of current paragraph (f)(1)(x) requires individuals who claim separate household status to provide documentation to the State agency that they are separate. We believe that this requirement is unnecessary and provides no meaningful guidance to the State agency. If the individual(s) meets the requirements in regulations at 7 CFR 273.1 to be a separate household, the State agencies can request proof; however, the primary evidence that would need to be provided is proof that the individual purchases food and prepares meals separately. Signed statements by the individuals involved would in most cases be the only documentation that could be provided.

Current paragraph (f)(1)(ix) concerning shelter costs for homeless households would be renumbered (f)(1)(x) and the first sentence would be revised 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. We would not include the language currently appearing in the second and third sentences of this newly designated 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 are not necessary.

It should be noted that through a regulatory publishing error, the current regulations at 7 CFR 273.2(f) contain two paragraphs designated as (f)(1)(xii). The first paragraph (f)(1)(xii) regarding the verification of physical or mental fitness of a student claiming to be an eligible student because of a disability would be removed. Since the verification is not mandatory in every case and State agencies are allowed by current paragraph (f)(2) to verify questionable information, we believe the current provision is unnecessary.

The second paragraph (f)(1)(xii) pertains to child support payments. This paragraph would be revised and renumbered (f)(1)(vii). We would retain the requirement for verification of the information. We would remove the third and fourth sentences because they are unnecessary. The third sentence encourages, but does not require, State agencies to use information from the State's Child Support Enforcement (CSE) automated data files in verifying child support payments. The fourth sentence provides that the State agency must give the household an opportunity to resolve discrepancies between household and CSE verification. Since this is the standard procedure for use of computer match data, it is not necessary to include the requirement here.

We would add a new paragraph (xi), "Unverified expenses." Currently 7 CFR 273.2(f)(3)(ii) contains procedures a State agency must follow if a household fails to provide required verification of a deductible expense within the required processing time. We believe this provision should be simplified and moved to paragraph (f)(1) because it applies to that paragraph as well.

Current 7 CFR 273.2(f)(2)(i) provides that the State agency must verify, prior to certification of the household, all other factors of eligibility which are questionable and affect a household's eligibility and benefit level. This section also requires State agencies to establish guidelines to be used in determining

what will be considered questionable and prohibits any requirement for verification based on race, religion, ethnic background, or national origin or targeting the guidelines to groups such as migrant workers or Native Americans for more intensive verification. These provisions would be retained.

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 would combine paragraphs (f)(2)(i) and (f)(2)(ii) into a new paragraph (f)(2) and revise the provisions regarding verification of citizenship. We are retaining the requirement that citizenship be verified only if it is questionable and the provision that participation in another program that requires verification of citizenship is acceptable if verification was obtained for the other program. As indicated above under the discussion of verification of alien eligibility, DOJ has provided guidelines for verification of citizenship as well as alien eligibility. Therefore, we propose to remove the verification guidance in current paragraph (f)(2)(ii) and provide in new paragraph (f)(2) that State agencies must verify citizenship in accordance with the DOJ guidance if a household member's citizenship status is questionable.

Current paragraph (f)(3) allows the State agency to mandate verification of any other factor which affects household eligibility or benefit level, including household size where not questionable. We would remove the phrase "including household size where not questionable." The provision already allows the State agency to mandate verification of any factor not already mandated by the regulations. Therefore, this phrase is unnecessary.

Current paragraph (f)(3)(i) provides that the State agency may establish its own standards to provide that all questionable information is verified in accordance with 7 CFR 273.2(f)(2), that such standards do not allow for inadvertent discrimination, and that the standards cannot be applied to households certified by SSA in accordance with 7 CFR 273.2(k) without SSA concurrence. We would remove the references to verifying questionable information and nondiscrimination because these requirements are covered in the new paragraph (f)(2) and § 272.6 respectively.

We would remove 7 CFR 273.2(f)(3)(ii) which contains procedures for handling a case if a State agency opts to verify a deductible expense and obtaining the verification would delay a household's certification.

The first sentence provides that if a State agency opts to verify a deductible expense and obtaining the verification may delay the certification, the State agency must advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. As all expenses for which verification is mandatory are covered by this provision, we would include it under new paragraph (f)(1)(xi) of this section. The second and third sentences identify specific deductions covered by this provision, and they would be removed because they are unnecessary. The provision in the fourth sentence regarding use of the standard utility allowance would be included in new paragraph (f)(1)(xi) of this section. The remaining text concerning delayed processing would be removed because it is covered by new paragraph (h)(3) of this section regarding delays in application processing.

We would combine the provisions of 7 CFR 273.2 (f)(4)(i), (ii), (iii) and (iv) regarding sources of verification into a single paragraph designated as (f)(4). Current paragraphs (f)(4)(i), (ii) and (iii) provide that documentary evidence must be the primary source of verification and that collateral contacts and home visits may be used only when documentary evidence is insufficient. We recognize that each State agency needs the flexibility to decide what sources of verification are appropriate in that State. Technological advances have made verification of many items achievable through computer checks. In many instances, the eligibility worker is best able to decide what verification is appropriate in a specific situation. However, State agencies should afford households some flexibility in providing necessary verifications. Therefore, in the new paragraph (f)(4), we would replace the specific requirements on sources of verification with a general statement requiring State agencies to establish their own standards for sources of verification. The standards would focus on determining the adequacy of the documentary evidence the household provides to support the statement on the application. State agencies may not limit households to one specific form of verification, if other documents can prove equally its statements. The new paragraph (f)(4) would continue to prohibit home visits unless scheduled in advance with the household. In some contexts such visits have been found to be violations of the Fourth Amendment to the Constitution (See, e.g., *Reyes v.*

Edmunds 472 F. Supp 1218 (D. Minn. 1979). The new paragraph (f)(4) would also retain the requirement in current paragraph (f)(4)(iv) on the handling of verification discrepancies.

We would condense the provisions of 7 CFR 273.2(f)(5)(i) and (f)(5)(ii) into a single new paragraph (f)(5). This paragraph would include the requirement in the first sentence of current paragraph (f)(5)(i) which provides that the household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The remaining sentences of current paragraph (f)(5)(i) require State agencies to help applicants with verification, allow households to supply documentary evidence in person or through another means, prohibit State agencies from requiring households to present verification in person, and require 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. As previously stated in the discussion relating to the notice of required verification, the proposal would require State agencies to offer assistance in completing verification requirements for such households. We would retain the sentences allowing households to provide verification through whatever means they choose, prohibiting States from requiring the household to supply verification in person, except in the case of a suspected intentional Program violation, and requiring the State agency to accept any reasonable documentary evidence provided by households. We believe these long standing policies are a necessary adjunct of the PRWORA requirement that State agencies provide accurate, timely, and fair service.

We would also remove current paragraph (f)(5)(ii) which provides that the State agency may use collateral contacts or announced home visits when documentary evidence is insufficient to make a determination of eligibility or benefit level and establishes specific requirements for obtaining a reliable collateral contact. Proposed paragraph (f)(4) would allow State agencies to set their own

verification standards, establishes collateral contact requirements, and requires that home visits be scheduled in advance. Therefore, these statements are unnecessary.

Current paragraph (f)(6) requires the State agency to document eligibility, ineligibility, and benefit level determinations. This documentation must be in sufficient detail to allow a reviewer to determine the reasonableness and accuracy of the determination. For obvious reasons, we do not intend to change the requirements of this paragraph.

We would remove 7 CFR 273.2(f)(7) regarding use of the State Data Exchange (SDX) and Beneficiary Data Exchange (BENDEX) databases. The provisions in this section are also contained in 7 CFR 272.8 and are not necessary here. Consistent with the removal of paragraph (f)(7), we would renumber current paragraphs (f)(8), (9), and (10) as paragraphs (f)(7), (8), and (9), respectively.

Newly redesignated paragraph (f)(7) provides procedures for verification of household circumstances reported subsequent to initial certification. Current paragraph (f)(7)(i) contains requirements for verifying changes reported at the time of recertification. Current paragraph (c)(7)(ii) contains requirements for verifying changes reported during the certification period. We would combine paragraphs (f)(7)(i) and (f)(7)(ii) into a single paragraph designated as (f)(7) and establish new verification requirements for changes that occur at any time subsequent to the initial certification.

Section 11(e)(3)(C) of the Act prior to PROWRA prohibited a State agency from requiring additional proof of a matter on which the State agency already has current verification, unless the State agency has reason to believe that the information possessed by the agency is inaccurate, incomplete, or inconsistent. The current regulations require verification for a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25 and for previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25. Income may not be verified if the source has not changed or if the amount has not changed by more than \$25, unless the information is incomplete, inaccurate, inconsistent or outdated.

Section 835 of PROWRA removed the prohibition on requiring households to submit additional information. Therefore, we propose to replace the current regulatory requirements with a general requirement that the State

agency verify information as required by 7 CFR 273.2(f)(1), (2), and (3), as proposed to be amended by this action, when a household reports any changes during the certification period or at recertification which would affect eligibility or the benefit level, or if unchanged information becomes questionable. Although this may increase verification efforts in a few instances, e.g., when income changes by less than \$25, we believe that this requirement is simpler to understand and administer, because the procedure is the same for all household circumstances. We believe that the proposed requirement that the change would have to affect eligibility or the benefit level will limit the increase in verification efforts significantly. The Department is particularly interested in receiving comments on this proposal.

We would remove newly designated paragraph (f)(8)(ii) regarding disclosure safeguards and agreements because 7 CFR 272.8 contains these requirements. With the removal of newly designated paragraph (f)(8)(ii), newly designated paragraphs (f)(8)(iii), (iv), and (v) would be redesignated as paragraphs (f)(8)(ii), (iii), and (iv), respectively. Minor editing changes would be made to the newly designated paragraphs (f)(8)(ii) and (iii).

Current paragraph (f)(9), newly designated as paragraph (f)(8), contains procedures for using the Income Eligibility Verification System (IEVS) information to verify eligibility and benefits. As previously discussed in this preamble, section 840 of PRWORA amended Section 11(i)(18) of the Act, 7 U.S.C. 2020(e)(18), to make use of IEVS a State agency option. This provision was effective upon enactment of the law, and States were allowed to implement this provision as of that date. If State agencies do access IEVS, most of the procedures contained in this paragraph are still appropriate. However, in newly redesignated paragraph (f)(8)(iv), we would remove the requirement that the State agency put in writing any information it has received from IEVS if it is requesting independent verification from the household. State agencies may be obtaining this information on-line while the household is present or may be able to request the independent verification more readily through a telephone call. Therefore, specifying that the request for verification be in writing restricts the State agency unnecessarily. Currently the section specifies the household's right to a fair hearing if it is terminated for failure to respond to a request for verification of IEVS data and again if it verifies information that results in a

negative action. We would remove the repetitive language regarding a household's right to a fair hearing.

Newly designated paragraph (f)(9) provides procedures for verifying alien status through the SAVE system. As previously discussed in this preamble, section 11(p) of the Act, as amended by section 840 of PRWORA, makes use of the SAVE system a State agency option. If the State agency uses the SAVE system, the procedures in this paragraph would apply. We would simplify the language of paragraph (f)(9) and eliminate repetitive statements contained in paragraph (f)(9)(i) regarding the procedures for obtaining verification from the household and the first sentence of (f)(9)(iii) regarding the procedures for accessing the SAVE system.

Normal Processing—7 CFR 273.2(g);

Delays in Processing—7 CFR 273.2(h).

Current 7 CFR 273.2(g) requires State agencies to process applications within 30 days. Current 7 CFR 273.2(h) provides requirements for handling applications when the process is delayed beyond the legislatively mandated 30 days. We would remove paragraph (h) entirely. We would revise paragraph (g) and redesignate it as paragraph (h). New paragraph (g) would contain provisions related to authorized representatives, and it will be addressed later. Proposed changes are made in response to the President's regulatory reform initiative to remove overly prescriptive regulations. The changes are also consistent with the spirit of PRWORA allowing State agencies to establish their own operating procedures and our belief that State agencies should have more flexibility with regard to application processing.

New paragraph (h)(1) would retain 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. We would 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.

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, would be added to new paragraph (h)(1). The remainder of current paragraph (g)(3) would be removed to enhance State agency flexibility. The second sentence requires the State agency to send a notice of denial on the 30th day if a household has failed to appear for two scheduled interviews and made no subsequent

contact with the State agency to express interest in pursuing the application and requires the household to file a new application if it is denied under these circumstances. This paragraph also requires that the State agency deny an application on the 30th day if it was able to conduct an interview and request all of the necessary verification, but the household failed to provide the verification.

As stated above, under the Department's proposal, current paragraph (h) would be removed. It provides detailed procedures for State agencies to follow in the event that final action is not taken on an application within 30 days from the date a household applies. We propose to replace the provisions under current paragraph (h) with 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.

In new paragraph (h)(3), we would retain, but consolidate, the procedures for determining the cause of a delay, taking into account the changes mandated by PRWORA. 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.

Authorized Representatives—7 CFR 273.2(g)

We propose to redesignate the provisions of current 7 CFR 273.1(f) on authorized representatives as paragraph 7 CFR 273.2(g). We believe the authorized representative provisions more appropriately belong under 7 CFR 273.2. We also propose to amend the authorized representative provisions as discussed below.

Current provisions regarding the use of authorized representatives in the application process are contained in several sections of the regulations. Section 273.1(f) contains general requirements for using an authorized representative to apply for the program, special procedures for drug addict and alcoholic treatment centers and group homes acting as authorized representatives, special procedures for use of an authorized representative for minor household members, restrictions on the use of authorized representatives, and provisions for disqualification of authorized representatives. Sections 273.11(e) and (f) also contain requirements for use of authorized representatives in the certification of residents of treatment centers and group homes, respectively. Section 274.5 contains requirements for use of authorized representatives to obtain benefits and current 7 CFR 274.10(c) contains requirements for emergency authorized representatives. In proposed new paragraph (g), we would condense and revise requirements for use of authorized representatives that appear in 7 CFR 273.1(f), 7 CFR 273.11(e) and (f), and 7 CFR 274.5.

We would move to 7 CFR 273.11(e) and (f) the requirements for treatment centers and group homes. The introductory paragraph of 7 CFR 273.1(f)(2) would be removed as unnecessary. The discussion in subparagraph (i) regarding addict and alcoholic treatment centers would be included in 7 CFR 273.11(e)(1) in place of the reference to 7 CFR 273.1(f)(2). In current subparagraph (ii) regarding group living arrangements, similar references in the first, second, fourth, fifth, and last sentences would be included in 7 CFR 273.11(f)(1). The 6th sentence would be included in 7 CFR 273.11(f)(7). The remainder of the paragraph would be removed as unnecessary. A reference to 7 CFR 273.11(e) and (f) would be included in the new paragraph 7 CFR 273.2(g)(1)(iii).

Proposed 7 CFR 273.2(g)(1) would be entitled "Applying for benefits." In new paragraph (g)(1)(i) we would include 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 remove the two regulatory references, because they are misleading. The reference to 7 CFR 273.11 is intended to assure that, except when the drug and alcoholic treatment centers and certain group living arrangements act as authorized representatives, the household is told of its liability for erroneous information given by the authorized representative. We would add regulatory language and remove the regulatory reference to ensure proper application of the policy. The intent of the reference to 7 CFR 273.16 is unclear so we are removing it. The new paragraph would retain the criteria in current paragraphs (f)(1)(i) and (f)(1)(ii) that nonhousehold members may be designated as authorized representatives only if the authorized representative has been designated in writing by the head of the household, the spouse, or another responsible member of the household, and the authorized representative is an adult who is sufficiently aware of relevant household circumstances to properly represent the household. We would remove current paragraph (3) regarding nonhousehold members who can apply for minors and include the content in new paragraph (f)(ii).

The information in introductory paragraph 7 CFR 274.5(a) and the first sentence of paragraph (b) would be removed as unnecessary. The contents of paragraph (a)(1) and the second sentence of (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 casefile 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 proposed new paragraph (g)(2)(ii), we would include a reference to 7 CFR 274.10(c) which provides for designating an

emergency authorized representative subsequent to the time of certification.

A new paragraph (3) entitled "Using benefits" would be added. 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 coupons on behalf of the household would be removed because it is not administratively feasible to enforce this provision.

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 would be combined in proposed paragraph 7 CFR 273.2(g)(4), entitled "Restrictions on designations of authorized representatives." We would 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.

The current restrictions provide that the State agency cannot impose a limit on the number of households an authorized representative may represent. In the event an employer is designated as the authorized representative for his or her employee or that a single authorized representative has access to a large amount of benefits, the State agency must exercise caution to assure that the 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 the authorized representative is properly using the coupons. We believe these are unrealistic expectations for the State agency. Section 11(e)(7) of the Act, 7

U.S.C. 2020(e)(7), allows the Secretary to restrict the number of households which may be represented by an individual. We would delegate this authority to the State agency in lieu of the current provision in order to enable the State agency to prevent abuse.

With these proposed changes, current 7 CFR 273.1(f) and 7 CFR 274.5 would be removed. The regulatory site of 7 CFR 274.5 would be reserved for future use.

Expedited Service—7 CFR 273.2(i)

Currently, 7 CFR 273.2 (i) lists the categories of households entitled to expedited service and establishes the procedures that State agencies must use in providing that service. The PRWORA included several provisions affecting the expedited service requirements.

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. Section 838 also increased the number of days which State agencies have to provide expedited service from 5 to 7 calendar days. In accordance with these provisions, this rule removes the reference to homeless households in current paragraph (i)(1)(iii), rennumbers paragraph (iv) as (iii), and changes the expedited processing timeframe appearing in current paragraph (i)(3) from 5 days to 7 days. Note: These changes are also included in another rule which may be published before this rule. These are nondiscretionary changes that are being made here to avoid unnecessary confusion.

In response to the President's regulatory reform initiative to remove unnecessary, redundant, outdated, or overly prescriptive rules, we would remove repetitive definitions and make several changes in the procedures for providing expedited service, as discussed below.

Under current paragraph (i)(2), State agencies are required to design their application procedures to identify households eligible for expedited service at the time they apply. The proposed rule would continue to require State agencies to prescreen applications for entitlement to expedited service. In addition, the proposed rule would require State agencies to document their evaluations. The current paragraph provides screening examples. The examples would be removed in the proposed rule, because they are unnecessary.

We would amend the first sentence of 7 CFR 273.2(i)(3)(i) to add language referring to access to benefits through an

Electronic Benefit Transfer (EBT) system or other electronic access devices in the first sentence. We would remove the reference to households residing in institutions applying jointly for SSI and food stamps as procedures for these households are addressed elsewhere in the regulations. We would remove paragraphs (i)(3)(ii) and (i)(3)(v). These two paragraphs provide the expedited time frame within which benefits must be provided to residents of drug addiction or alcoholic treatment and rehabilitation centers, residents of group living arrangements, and residents of shelters for battered women and children who are eligible for expedited service. As the expedited time frame is no different from the requirements for other households eligible for expedited service, there is no need for separate regulatory sections for these households.

We would renumber 7 CFR 273.2(i)(3)(iii) and (i)(3)(iv) as paragraphs (i)(3)(ii) and (i)(3)(iii), respectively, to reflect the proposed removal of paragraph (i)(3)(ii). We would amend newly designated paragraph (i)(3)(ii) to reflect the proposed removal of the requirement for an in-office interview discussed earlier in this preamble. We would also remove the sentence that provides that the first day of the 7-day period within which expedited service must commence is the calendar day following application. The first day for all application processing requirements is the calendar day following application. This sentence is, therefore, repetitive and unnecessary.

Current paragraph (i)(4) provides the special procedures State agencies must use for expedited service. These procedures are very detailed requirements that State agencies must follow, including a multitude of options. In this rule we propose to significantly streamline these requirements as discussed below.

In 7 CFR 273.2(i)(4)(i), we would remove the references to the sources of verification. We would subdivide current paragraph (i)(4)(i) into paragraphs entitled "Verification," "Social security numbers," and "Work registration." Under new paragraph (i)(4)(iii), we would include a requirement that the applicant register for work, but we would remove the language about attempting to register other members prior to certification. If an authorized representative applies on behalf of the household, that person may register a member for work so this should not delay the process.

Current paragraph (i)(4)(i)(B) already provides that the State agency may verify factors other than identity,

residency, and income provided that verification can be accomplished within expedited processing standards. We believe that providing specific directions for certain additional items is therefore unnecessary. The eligibility worker is in the best position to decide what information can be verified and how verification can be achieved in a specific case.

Paragraph (i)(4)(i)(B) currently provides that households entitled to expedited service will be asked to furnish an SSN or apply for one for each person before the second full month of participation. Households entitled to expedited service were allowed to participate for the first full month without providing or applying for an SSN because of the requirement to combine the prorated allotment for the month of application and benefits for the first full month for households applying after the 15th of the month. Since Section 828 of PRWORA made use of combined allotments a State agency option, as discussed below, we propose to provide that households must furnish or apply for an SSN prior to the second month's issuance or, if the State agency issues combined allotments, prior to the third month's issuance. For newborns, we would require the household to provide an SSN or proof of an application for an SSN at its next recertification or within 6 months following the month the baby is born, whichever is later, in accordance with 7 CFR 273.6(b)(4). Those household members who do not meet these requirements must be allowed to continue to participate if they satisfy the good cause requirements specified in 7 CFR 273.6(d).

We would remove 7 CFR 273.2(i)(4)(ii). This paragraph requires the State agency to promptly contact the collateral contact to obtain verification. State agencies have the option of verifying information provided by the household either through a collateral contact or through readily available documentation pursuant to current paragraph (i)(4)(i)(A). There is no requirement that verification be accomplished solely through a collateral contact. Further, the State agency is required to process an application so that benefits can be provided within the expedited service time standard, regardless of the method of verification used. Therefore, this paragraph is unnecessary.

We would remove 7 CFR 273.2(i)(4)(iii). The provisions regarding certification periods would be removed because they are unnecessary. The provisions regarding postponed verification would be included in new

paragraph (i)(4)(i)(B). The provisions regarding notices of eligibility and expiration would be removed because they are also included in 7 CFR 273.10(g)(1).

Proposed paragraph (i)(4)(ii)(A) would provide that if a household applies on or before the 15th of the month and is assigned a certification period of longer than one month postponed verification must be obtained prior to the second month's issuance. The State agency must issue the second month's benefits within seven working days from receipt of the verification but not before the first day of the second month.

Proposed paragraph (i)(4)(ii)(B) would provide that if a household applies after the 15th of the month postponed verification must be submitted prior to the third month's issuance. The third month's benefits must be provided within seven working days from the receipt of the necessary verification, but not before the first day of the third month.

Newly designated paragraph (i)(5) allows State agencies to issue combined allotments to households that apply after the 15th of the month and have their applications processed under the expedited service procedures. The combined allotment consists of a prorated amount for the month of application and the benefits for the first full month of participation. Section 203 of the Hunger Prevention Act of 1988 (Pub. L. 100-435) amended section 8(c) of the Act, 7 U.S.C. 2017(c), to require State agencies to provide combined allotments to all households applying after the 15th of the month. Regulations dated June 7, 1989 (54 FR 24518) implemented this requirement. Section 1732 of the 1990 Leland Act (Pub. L. 101-624) amended section 8(c)(3) of the Act to make use of combined allotments for households processed under the 30-day standard a State agency option. This provision was added to 7 CFR 273.2(g) by regulations dated October 17, 1996 (61 FR 54303). Combined allotments were still required for households entitled to expedited service. The October 17, 1996 regulations moved that requirement from 7 CFR 274.2(b)(2) to 7 CFR 273.2(i)(4) and provided that, if necessary, verification should be postponed to meet the expedited time frame. Section 828 of PRWORA amended section 8(c) of the Act again to make combined allotments optional for expedited service households as well as households processed under normal procedures. We would amend newly designated paragraph (i)(5) to provide that, at State agency option, households applying after the 15th of the month may receive a combined allotment.

We would remove 7 CFR 273.2(i)(4)(iii)(D) which prohibits providing benefits to households determined ineligible in the month of application or the following month or which have failed to provide postponed verification. This paragraph would be removed because it is not necessary.

Current paragraph (i)(4)(iv) would be renumbered as paragraph (i)(6), and it would be entitled "Frequency." The provision would continue to provide that there is no limit to the number of times a household can be certified under the expedited service procedures but the expedited procedures would not apply at the time of recertification if a household reapplies before the end of its current certification period.

Current paragraph (i)(4)(v) would be removed as unnecessary. That paragraph provides that households requesting, but not entitled to, expedited service must have their applications processed according to normal standards.

We are also proposing to make additional editing changes throughout paragraph (i) which are not discussed in detail in this preamble. These changes do not affect the procedural requirements but simply provide clarity or brevity.

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

Current regulations at 7 CFR 273.2(j) mandate categorical eligibility for certain households and mandate joint application processing requirements for households in which all members are receiving public assistance, supplemental security income (SSI), or general assistance (GA). Section 835 of PRWORA amended Section 11(e) of the Act to eliminate the mandate for joint processing of such cases. However, State agencies may opt to continue to jointly process these cases. Accordingly, we would revise current paragraph (j) in its entirety to: (1) Retain pertinent categorical eligibility provisions; (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 would change the title of 7 CFR 273.2(j) to "Categorical eligibility." We would remove current paragraphs (j)(1), (j)(3) and (j)(5) which set forth mandatory joint processing requirements. Although we would remove paragraphs (j)(1) and (j)(3), some statements in these paragraphs would be retained but moved to other locations in

the regulations or in the new paragraph (j). Current paragraph (j)(5) also provides that a separate application must be used for TANF/GA food stamp applicants. Under the provisions of PRWORA, the type of application used is a State agency option; therefore, the provision is being removed. With the removal of paragraphs (j)(1) and (j)(3), current paragraphs (j)(2) and (j)(4) would be redesignated as paragraphs (j)(1) and (j)(2), respectively.

New paragraph (j)(1) would be entitled "TANF and SSI households." and it would be revised in its entirety. We would retain the policy but simplify the language. New paragraph (j)(2) would be entitled "GA households." The new paragraph would be revised. We would retain the policy but make some editorial changes. We would remove current paragraphs (j)(4)(vi) regarding categorical eligibility for combination households as unnecessary.

Alien Eligibility—7 CFR 273.4

Under section 6(f) of the Act, 7 U.S.C. 2015(f), and current rules at 7 CFR 273.4(a), citizens, nationals, and aliens lawfully admitted for permanent residence, refugees, asylees, parolees, and certain other specifically listed categories of aliens were eligible to participate in the Food Stamp Program, if they met the other eligibility criteria. Under section 402 of PRWORA, as amended, citizens and non-citizen nationals remain eligible, but the remaining categories of eligible aliens have been changed.

We propose 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 propose to revise the section to remove unnecessary and overly prescriptive requirements. As discussed above, we would also make 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.

Current regulations at 7 CFR 273.4(a) which provide that a citizen is eligible for food stamp benefits do not define "citizen." We propose to add a reference in paragraph (a)(1) to the DOJ interim guidance which includes a definition of the term. According to Step 3 A. of the guidance, a citizen is one of the following (subject to certain exceptions and qualifications):

1. A person (other than the child of a foreign diplomat) born in one of the several States or in the District of Columbia, Puerto Rico, Guam, the U.S.

Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost citizenship;

2. A person born outside of the United States to at least one U.S. citizen parent (sometimes referred to as a "derivative citizen"); or

3. A naturalized U.S. citizen.

The DOJ interim guidance also includes non-citizen nationals under the discussion of citizenship. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements), or certain persons who elected to become nationals but not citizens of the United States pursuant to section 302 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94-241, 90 Stat. 263, 48 U.S.C. 1801 note). In the past, Food Stamp Program regulations did not distinguish between citizens and non-citizen nationals. For clarity, we propose to add the term "non-citizen national" to paragraph (a)(2) to provide that non-citizen nationals are eligible to participate.

Section 431 of PRWORA, as amended by section 501 of the OCAA and sections 5302, 5562, and 5571 of the Balanced Budget Act, defines a qualified alien as:

(1) An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (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 Act;

(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.

Section 5562 of the Balanced Budget Act amended the INA citation for aliens whose deportation has been withheld to add a reference to section 241(b) of the INA. The OCAA amended section 243(h) of the INA to consolidate the two former procedures of deportation and

exclusion into one procedure called removal. The section was renumbered as 241(b)(3) but appropriate conforming amendments were not made to section 402 and other sections of PRWORA which referenced section 243(h). The Balanced Budget Act corrected that omission.

Section 501 of the OCAA amended section 431 of PRWORA by adding a new paragraph (c) to provide that certain aliens who have been battered or subject to extreme cruelty are considered qualified aliens if they meet certain criteria. Section 5571(c) of the Balanced Budget Act further amended section 431(c) by adding a new paragraph (3) to include the alien child of a battered parent as a qualified alien. To be a qualified alien based on battery or extreme cruelty, the alien must meet the following conditions:

(1) The alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty; in the case of a battered child, the alien did not actively participate in the battery or cruelty; in the case of an alien child whose parent has been battered, the child must be living in the same household as a parent who has been battered under these circumstances;

(2) The battered alien or child no longer resides in the same household as the abuser;

(3) There is a substantial connection between the battery or cruelty and the need for benefits;

(4) The alien described in paragraph (1) must also have been approved or have a petition pending with INS that sets forth a prima facie case for status as a spouse or a child of a U.S. citizen under INA section 204(a)(1)(A)(ii), (iii) or (iv); classification under section 204(a)(1)(B)(ii) or (iii); suspension of deportation and adjustment of status under section 244(a)(3); status as a spouse or child of a citizen under section 204(a)(1)(A)(i); or classification under section 204(a)(1)(B)(i). An alien whose child has been battered or subjected to extreme cruelty by a spouse of a parent of the alien must have been approved or have a petition pending with INS for classification under section 204(a)(1)(B)(ii) or (iii).

Section 5571 of the Balanced Budget Act also amended section 431 of PRWORA to provide that the agency providing the benefits will be responsible for determining whether there is a substantial connection between the need for benefits and the

abuse. Section 5571 also provides that the Attorney General must issue guidance concerning the meaning of the terms "battery" and "extreme cruelty" and the standards to be used for determining whether there is a substantial connection between the abuse and the need for benefits. The Attorney General's guidance was published in the **Federal Register** on December 11, 1997 (62 FR 75285).

We do not propose to include in the regulatory language all the provisions of the law for establishing eligibility as a battered alien because detailed information is available in the DOJ interim guidance and the battered aliens are not eligible for food stamps unless they meet one of the criteria we propose to list in new paragraph (a)(5)(ii).

Section 5302 of the Balanced Budget Act added Cuban and Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, to the list of qualified aliens in section 431 of PRWORA. We would include the list of qualified aliens in the proposed paragraph (a)(5)(i).

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 would include the list in proposed paragraph (a)(5)(ii).

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 as determined under title II of the Social Security Act and as provided under section 435 of PRWORA, as amended by section 5573 of the Balanced Budget Act. An alien may be credited with all of the qualifying quarters worked by a parent of the alien before the alien becomes 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 propose 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 quarters of coverage based on relationship are needed and a signed form cannot be obtained, 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 propose 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. A conforming amendment is being proposed 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 worked because of the time it takes SSA to update the database using the most recent tax returns. Lag quarters are quarters for which SSA has not had time to update the information.

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 Reinvestment 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 are proposing that "received" means that the alien actually received the assistance or food stamps in the quarter in question.

We propose 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 his parents received SSI in the first quarter of 1997, the alien would have one quarter counted because he worked and he did not receive assistance; if the alien did not work, but his parents worked and received SSI, the alien would not have any countable quarters.

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 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 and 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 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 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. 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 (8/5/64-5/7/75.) Section 508 further extends food stamp eligibility to the spouse, or unmarried surviving spouse, and unmarried dependent children of such Hmong or Laotian.

Section 509 of AREERA amended section 403(b) of PROWRA 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. These are the only aliens who can be eligible for food stamps without being a qualified alien as defined in Section 431 of PROWRA.

We propose to include the alien eligibility criteria added by AREERA in section 7 CFR 273.4(a).

The aliens provisions contained in AREERA are effective November 1, 1998.

Section 403 of PRWORA, as amended by Balanced Budget Act, provides that, with certain exceptions, aliens, including those admitted for lawful permanent residence, who enter the country on or after August 22, 1996, are barred from Federal means-tested public benefits for 5 years. As noted above, section 402 of PRWORA, as amended by the Balanced Budget Act, contains a specific timeframe for the Food Stamp Program which is somewhat different. Section 402, as amended, provides that for food stamp purposes refugees, asylees, aliens whose deportation have been withheld, Cubans, Haitians and Amerasians are only eligible for 7 years. The time limits imposed by section 402, as amended, govern the Food Stamp Program because that section specifically references the Food Stamp Program. Section 403 of PRWORA arguably also applies to the Food Stamp Program. This is because food stamps are a "Federal means-tested public benefit under section 403. See 63 FR 36653, 36654. However, section 402(a)(2)(A) of PRWORA makes refugees, asylees, deportees, Cubans, Haitian, and Amerasians eligible for food stamps for 7 years. Following this 7-year eligibility period, these groups of qualified aliens are ineligible for as long as they remain in one of the described alien categories. Conversely, section 403(b)(1) exempts these same groups of qualified aliens from the initial 5-year ban on the receipt of Federal means-tested public benefits. At the expiration of the 5-year ban, a qualified alien falling into one of the described alien categories is eligible for Federal means-tested public benefits without any time limitation. Thus, the application of both sections 402 and 403 of the Food Stamp Program would result in an unavoidable conflict: under section 402, aliens within the described categories would be eligible for 7 years followed by a ban on the receipt of further benefits, while under section 403, these same aliens would be eligible for benefits from the time they fall within one of the described alien categories without time limitation.

In order to avoid this conflict, we propose to apply the requirements of section 402 uniformly to the Food Stamp Program. This interpretation

avoids the absurd result of separate provisions of PRWORA mandating mutually inconsistent eligibility determinations. Additionally, this interpretation is supported by Congress' express citation to the Food Stamp Act within the body of section 402 (see 402(a)(3)(B), 7 U.S.C. 1612(a)(3)(B)), while section 403 contains no such cross-reference. Thus, we believe the strictures of section 402 more closely express Congress' intentions for alien participation in the Food Stamp Program.

Section 402, as amended, does not impose any time limit on aliens admitted for legal permanent residence who can be credited with 40 quarters of work. We propose that the five-year ban in section 403 not apply to aliens admitted for lawful permanent residence for food stamp purposes. We propose to include the seven-year time limit in section 402 for refugees, asylees, deportees, Cubans, Haitians, and Amerasians in new paragraph (a)(2).

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 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 unmarried 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 propose 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 if 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 propose 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 propose 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 PROWRA provides that except as otherwise provided, the terms used have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act (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 propose 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 propose 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 propose to remove paragraphs (a)(8) and (a)(9).

We also propose 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 are proposing a conforming amendment to 7 CFR 273.1(b)(2)(ii), concerning ineligible household members. We propose 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.

We are proposing to move the sponsored alien provisions from 7 CFR 273.11(j) to new 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.

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

On August 21, 1995, we published a final rule implementing section 1719 of the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 (Pub. L. 101-624, 104 Stat. 3783), as amended by section 904 of the Food, Agriculture, Conservation, and Trade Act of 1991 (Pub. L. 102-237, 105 Stat. 1818). These statutory provisions, which amended section 5(g) of the Act (7 U.S.C. 2014(g)(5)), expanded the criteria under which a resource is considered inaccessible. The final rule required State agencies to develop standards for identifying resources which, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or because the costs of selling the household's interest would be relatively great. Under the final rule, a resource so identified is excluded if the estimated amount returned to the household from its sale would be less than half of the amount of the applicable resource standard for the household. For reasons cited in the preamble discussion, we determined that the amendment did not apply to negotiable instruments or vehicles. Subsequently, through litigation, various courts determined that our policy was a reasonable, but not the only possible, interpretation of the statute. In the absence of clear Congressional direction, the courts gave deference to the decision of the administering agency in this matter.

We now are proposing to pursue a different policy which would include vehicles under the inaccessible resources provisions. Since we established the current policy in the early 1990's, public policy has focused on the challenges of enabling families to attain self-sufficiency. It has become evident that a more flexible resource policy with respect to vehicle

ownership would greatly assist individuals and families in achieving self-sufficiency. In rural areas, ownership of a reliable vehicle is a virtual prerequisite to employment. Even for residents of urban areas, ownership of a vehicle to drive to work is an increasing necessity as more desirable, higher paying jobs move to suburban areas with little or no mass transit access. The current food stamp vehicle policy seems antithetical to the broader goal of assisting families to become self-sufficient. Too many times low-income working households face "Hobson's choice" in applying for food stamps. If they dispose of a dependable vehicle because its excess fair market value would cause the household to exceed the resource limit, they may thereby lose the means necessary to seek or maintain employment. If they choose to retain the vehicle, they must do without the important nutrition support food stamps provide, even though their income level would otherwise qualify them for participation.

We believe it is possible, under our new policy, to eliminate this undesirable obstacle to self-sufficiency while not allowing households that own expensive vehicles to qualify for food stamps. Under the proposed method of evaluating vehicles' resource value, together with the existing food stamp income tests, households would have to have income significantly higher than 130 per cent of the poverty guidelines to be able to afford the monthly payments and insurance to maintain a vehicle of more than modest value. Moreover, research findings from our Vehicle Exclusion Limit Demonstration Project (VELD) in North Carolina, which ran from November 1994 through September 1996, indicate that very few low income households have vehicles of more than modest value. See (<http://www.fns.usda.gov/oane/MENU/Published/FSP/FSP.HTM>). The vehicles of the substantial majority of households participating in the VELD were worth \$8,000 or less. The mean fair market value of the households' first vehicle excluded was \$7,253. It is our judgment that, in appropriate circumstances, possession of such a vehicle can be compatible with the purposes of the Program.

Even vehicles of such modest value might not, however, qualify for exclusion from countable resources under the proposed rule. Thirty-nine percent of VELD participants, for example, had less than \$1,000 equity in the first vehicle. Thus a significant portion of those households, but not all of them, would have benefited from

application of the inaccessible resource rule to vehicles.

For these reasons, we have reexamined and proposed to change our policy against applying the inaccessible resource provision to vehicles. We believe this interpretation is permissible under the current statutory authority. We previously took the position that the inaccessible resource provision, 7 U.S.C. 2014(g)(5), was inapplicable to vehicles. See 60 FR 43347, 43349 (1994). In sustaining our earlier interpretation, however, the Federal Courts of Appeals in *Alexander v. Glickman*, 139 F.3d 733 (9th Cir. 1997), and *Warren v. North Carolina Dept. of Human Resources*, 65 F.3d 385 (4th Cir. 1995), concluded that the Secretary's interpretation was plausible, but was not the only valid interpretation of the statute. The Ninth Circuit opined that "Congress clearly intended that the Secretary would determine what was and what was not an 'inaccessible resource,' and identified as a 'plausible construction' of the statute one that would count vehicles 'as assets under (g)(2) unless they are inaccessible under (g)(5) * * *.'" *Alexander*, 139 F.3d at 736. The Fourth Circuit concluded that the statute was best read not to treat vehicles as subject to the inaccessible resource provision, but nonetheless noted that the statute was "ambiguous" on that issue. *Warren*, 65 F.3d at 391.

Accordingly, since the statute affords discretion on the issue of whether vehicles may be treated as inaccessible resources, the Secretary proposes to exercise his discretion to propose a revision of the current policy through this rulemaking. He would amend section 273.8(e)(18) to allow vehicles to be treated as inaccessible resources as described herein. Specifically, he would 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.

In summary State agencies would handle vehicles as follows:

(1) A vehicle would be completely excluded from the resource test if 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 classified as an inaccessible resource (i.e., likely to produce a return of less than \$1,000 or \$1,500, depending on the household's resource limit);

(2) One nonexempt licensed vehicle regardless of use, plus any vehicles which are used for employment or

training purposes, would be subject to the excess fair market value test only; and

(3) Any other vehicle the household possesses would be subject to a dual test, that is, the higher of the fair market value in excess of \$4,650¹ 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 elderly members. The household has no other vehicles and it has \$500 equity (fair market value less debt) in the 1994 sedan. As the household's equity in the vehicle is less than \$1,000, the entire value of the vehicle would be deemed to be an inaccessible resource and would thus be excluded from consideration as a resource for eligibility purposes. (2) Alternatively, assume a household has a single vehicle with a fair market value of \$6,200, the sale of which would produce a return of \$1,000 or more. In that case, the inaccessible resource provision would not apply. The State agency would thus evaluate the vehicle according to its excess fair market value. The countable fair market value of the vehicle as a resource would be \$1,350 (\$6,000 - \$4,650¹). Assuming the household did not have any other countable resources that, combined with the \$1,350, would exceed the applicable resource limit for the household, the household would remain eligible for participation. (3) Assume the household has two non-excludable cars, neither of which is used for employment-related purposes. The State agency would evaluate the first car, which is exempt from the equity test regardless of use, for excess fair market value only as in example (2). Because the second car is not used to transport household members for employment-related purposes, the State agency would establish both this vehicle's fair market value and its equity value, and would count toward the household's resources the greater of the two amounts. Assuming the second car has fair market value of \$6,000 and an equity value of \$2,200, for example, the equity value would exceed the excess fair market value of \$1,350, and the equity value would be counted. The \$2,200 equity value would render ineligible a household subject to the \$2,000 resource limit.

¹ Effective October 1, 1996, section 810 of PRWORA amended section (5)(g) of the Act to set the fair market value exclusion limit at \$4,650. See the proposed rule published at 64 FR 37456 for further information.

We are interested in receiving public comment on this significant proposed change in policy. We would also like to receive 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. Commenters should be mindful that the fair market value test is established by statute, while the equity test is subject to Departmental discretion.

JTPA Payments—7 CFR 273.9(b)(1)(v)

Current regulations at 7 CFR 273.9(b)(1)(v) provide that earnings of individuals 19 years of age or older who are participating in on-the-job training programs under Section 204(5), Title II, of the Job Training Partnership Act (JTPA), Pub. L. 97-300, must be counted as income, unless otherwise excluded under the provisions of 7 CFR 273.9(c)(7). Section 142 (b) of the original JTPA provided that allowances, earnings, and payments to individuals participating in programs under JTPA could not be considered as income for Federal means-tested programs. Subsequently Pub. L. 99-198, the Food Security Act of 1985, amended Section 5(l) of the Act, 7 U.S.C. 2014(l), to require counting as income on-the-job training payments provided under Section 204(5) of Title II of the JTPA, except for dependents less than 19 years old. Section 702(b) of Pub. L. 102-367, the Job Training Reform Amendments of 1992, restructured the provisions in the JTPA and further amended Section 5(l) of the Food Stamp Act by replacing the reference to Section 204(5) with references to Section 204(b)(1)(C) and Section 264(c)(1)(A). This change requires the exclusion of all on-the-job training payments received under the Summer Youth Employment and Training Program. Moreover, section 199A(c) of the Workforce Investment Act (WIA) of 1998 states that all references in any other provision of law to a provision of the Comprehensive Employment and Training Act (CETA), or of the Job Training Partnership Act (JTPA), as the case may be, shall be deemed to refer to the corresponding provision of that law. We propose to change the references in 7 CFR 273.9(b)(1)(v) accordingly.

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. The regulations are based on a provision of the Mickey Leland Childhood Hunger Relief Act (Pub. L. 103-66), which was implemented in final regulations dated August 29, 1994 (59 FR 44309). Section 811 of PRWORA amended Section 5(k)(2)(F) of the Act to remove the exclusion for transitional housing payments.

Because of the many changes in this provision in recent years, we are providing a brief historical summary that may be helpful to readers. The Food Security Act of 1985 (Pub. L. 99-198), implemented by regulations dated September 29, 1987 (52 FR 36390), specifically provided that PA or GA payments diverted to a third party on behalf of the household for living expenses should be considered income. The law reinforced previous policy that payments from governmental assistance programs be treated as income. However, the law also provided an exclusion for State or local emergency or special assistance vendor payments. These payments are excluded to the extent that the payment is not normally provided as part of a PA grant and is provided over and above the normal grant. In 1987, Pub. L. 100-77, the Stewart B. McKinney Homeless Assistance Act, amended the Act by excluding PA or GA housing assistance made to a third party on behalf of households residing in temporary housing facilities, if the temporary housing unit did not have a stove or refrigerator. The provision was to expire on September 30, 1989. The Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101-624) amended the Act to allow an exclusion for households living in transitional housing equal to 50 percent of the maximum shelter allowance provided to households receiving assistance under Title IV-A of the Social Security Act who live in permanent housing and made the provision retroactive to October 1, 1990. Section 906 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102-237) clarified that the subject provision was effective only if the State calculates a shelter allowance to be paid under the State Plan of Operation separate and apart from payments for other household needs. The 1993 Leland Act (Pub. L. 103-66) provided an

exclusion for the full amount of the assistance.

In accordance with PRWORA requirement, we propose 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 may continue 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 may also be excluded. With the removal of paragraph (c)(1)(i)(E), current paragraph (c)(1)(i)(F) would become paragraph (c)(1)(i)(E). With the removal of paragraph (c)(1)(ii)(E) and the removal of paragraph (c)(1)(ii)(A), as described under "Energy Assistance" below, current paragraphs (c)(1)(ii)(B) through (G) would become paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(E).

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 propose to amend 7 CFR 273.9(c)(7) to exclude the earned income of any household member who is under age 18. We propose 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).

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 propose to make conforming amendments to these sections to change the age from 22 to 18.

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

In 7 CFR 273.9(c)(8) regarding nonrecurring lump-sum payments, we

plan 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 are proposing to include this policy except that we plan to change the 90-day period to a 4-month period. The Department of Health and Human Services uses a 4-month period as the regulatory framework for its definition of short-term. (See **Federal Register** Volume 64, No. 69, dated April 12, 1999, page 17759.)

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. That section also contains detailed guidance for determining when assistance is actually provided for the "purpose" of energy assistance.

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. This eliminates the exclusion of 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 propose to revise 7 CFR 273.9(c)(11) in its entirety. In the new paragraph (c)(11)(i) we would add an exclusion 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. In new paragraph (c)(11)(ii) we would add an exclusion for one-time payments issued on an as-needed basis under State or

Federal law for weatherization or emergency replacement or repair of heating or cooling devices. For the purposes of this provision, we would consider a one-time payment as one which is provided on an as-needed basis rather than in a regular series of payments. A household would have to apply for this assistance each time it incurred a cost for weatherization or emergency repair or replacement of a heating or cooling device. If one payment is received to replace windows and another payment is later received to replace a furnace, each payment could be considered a one-time payment. If a down payment on an expense is made and the final payment is made when the work is completed this would be one payment. All other provisions appearing under current paragraph (c)(11) would be removed.

Section 808 of PRWORA also made a conforming amendment to section 5(k) of the Act (7 U.S.C. 2014(k)) to remove existing exclusions for energy assistance in sections 5(k)(1)(B) and (C). These exclusions appear in current regulations at 7 CFR 273.9(c)(1). Previously, section 5(k)(1)(B) of the Act excluded third-party housing assistance for energy and utility expenses, and section 5(k)(1)(C) excluded third-party energy assistance payments. PRWORA added a new paragraph (C) to section 5(k)(1) to exclude only the types of energy assistance listed in section 5(d)(11) of the Act, as amended by PRWORA, when the assistance is provided in the form of third-party payments. Accordingly, we would make a conforming amendment at 7 CFR 273.9(c) to remove the income exclusion for GA vendor payments for utility expenses in paragraph (c)(1)(ii)(A). It is not necessary to make a conforming amendment to the income exclusion provisions at 7 CFR 273.9(c)(1)(i)(C) and (c)(1)(ii)(B) regarding energy assistance because they refer to paragraph (c)(11), which contains the new exclusion.

Section 808 of PRWORA also added a new paragraph (4)(A) to section 5(k) of the Act to provide that, with one exception, a third-party payment under a State law for energy assistance is considered to be money paid directly to the household. The exception is contained in paragraph 5(k)(2)(G) of the Act and refers to assistance provided to a third party on behalf of a household under a State or local GA program, or comparable program, if, under State law, no assistance under the program may be provided directly to the household in the form of a cash payment. This exclusion is located in current regulations at 7 CFR 273.9(c)(1)(ii)(G). Therefore, no changes

are needed to implement this PRWORA provision. Paragraph 5(k)(4)(B) of the Act, as amended, also provides that for purposes of the excess shelter deduction, an expense paid on behalf of a household under a State law to provide energy assistance is considered an out-of-pocket expense incurred and paid by the household. Therefore, the household is entitled to claim the expense as a shelter cost. This provision is discussed further under the standard utility allowance provision below.

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 believe these two sections of regulations are closely related and should be combined. Therefore, we would move the provisions of paragraph (d)(5), combine them with the provisions in paragraph (d)(6), and retitle the revised paragraph (d)(6) as "Shelter costs." Paragraph (d)(7) regarding child support would be redesignated as (d)(5).

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. In October 1995, the standard was updated to \$143 per month for FY 1996. The regulation is based on a provision of the Mickey Leland Domestic Hunger Relief Act (Pub. L. 104-624) which amended section 11(e)(3)(E) of the Act (7 U.S.C. 2020(e)(3)(E)) to require that State agencies develop standard shelter estimates. The provision authorized the Secretary to issue regulations to preclude the use of the standard shelter estimate for homeless households with extremely low shelter costs. The State agency was required to use the estimate in determining benefits unless a household verified higher expenses. Readers may refer to the final regulations implementing this provision

published on December 4, 1991 (56 FR 63594) for a more complete discussion of the issues involved. In implementing this provision, FNS provided that the homeless shelter estimate would be 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.

The Conference Report accompanying PRWORA (House Report 104-725) indicates that the homeless shelter allowance is to be used in determining a homeless household's excess shelter deduction. However, the provision was added to the Act as a separate deduction. 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. Since the language is clear, there is no reason to refer to the legislative history of the provision. Therefore, we propose 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 are also proposing a conforming amendment to 7 CFR 273.10(e)(1)(i) to add a new paragraph (G) to include the standard homeless shelter deduction.

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. It indicates that the shelter deduction limit applicable for use in the States, the District of Columbia, Guam, and the Virgin Islands will be prescribed in **Federal Register** notices. Paragraphs (5)(d)(ii)(A) through (E) describe allowable shelter expenses.

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).

Current paragraph (d)(5)(ii) provides that the maximum shelter deduction amounts will be published in General Notices published in the **Federal Register**. In 7 CFR 273.9(d)(9), the shelter deduction amounts and adjustments are described. Section 809 of PRWORA sets the limits for the various areas by year. Therefore, we propose to remove these provisions and provide instead that FNS will notify State agencies when the amount of the excess shelter limits change.

We propose to amend current 7 CFR 273.9(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. These additions are being made in response to comments on the proposed rule published November 22, 1994 (59 FR 60087) titled *Excess Shelter Expense Limit and Standard Utility Allowances (ESE) rule*.

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

3. *Standard utility allowance*—7 CFR 273.9(d)(6) Under the proposed reorganization of 7 CFR 273.9(d)(6) outlined above, provisions for utility standards would be contained in 7 CFR 273.9(d)(6)(iii) and would be organized as follows. The provisions for developing standards would be located in paragraph (iii)(A), and requirements for updating standards would be contained in paragraph (iii)(B). Provisions governing entitlement to the standard containing heating or cooling expenses would be included in paragraph (iii)(C). Household options would be addressed in paragraph (iii)(D), a new option to allow States to mandate use of the standards would be addressed in paragraph (iii)(E), and the requirements for shared expenses would

be addressed in paragraph (iii)(F). Changes are being proposed as required by PRWORA and to enhance State flexibility and simplify the regulations. In addition, we are taking this opportunity to review the proposed changes in the ESE rule and to repropose several provisions which have been modified in response to comments. The final ESE rule was withdrawn from clearance when it became apparent that pending legislation would make several of the proposed provisions obsolete.

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. For the purposes of this proposed rule, we propose to identify this allowance as 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. However, prior to enactment of PRWORA, approximately half of the State agencies had been granted waivers to offer an LUA to households that do not qualify for the SUA. The new authority for developing an LUA would be contained in proposed paragraph (d)(6)(iii)(A).

We propose to provide in paragraph (d)(6)(iii)(A) that State agencies may establish an LUA that includes at least two utilities other than telephone. State agencies may offer individual standards to households that incur only one utility expense. We would also provide that State agencies may use different types of standards but cannot allow households

to use two standards that include the same expense. The State agency may 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) are allowable expenses. As provided in Policy Memo 3-97-04, dated May 9, 1997, States in which the cooling expense is minimal may include the cooling cost in the LUA as part of the electricity component.

The proposed ESE rule would have allowed State agencies to establish an LUA that includes electricity, water, sewerage, and garbage or trash collection and is available only to households that have no heating or cooling costs but incur the cost of electricity and either water or sewerage. Four of the nine State agencies that commented on this proposal objected to the requirement that households incur specific utility costs to qualify for an LUA. They asked that the rule be revised to give State agencies greater latitude in developing an appropriate LUA and that the regulations not mandate which expenses a household would have to incur to receive the LUA.

We are not reproposing the LUA provisions of the ESE rule in this proposed rule because they have been superseded by Section 809 of PRWORA as discussed above. However, in this proposed rule, we are including several ESE provisions regarding standards and entitlement to a HCSUA.

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. The proposed ESE rule would have required State agencies that develop new standards to use FNS-approved methodologies, review and adjust the standards annually, and submit revised amounts to FNS for approval. The final ESE rule would have required State agencies to submit methodologies used in developing and updating standards to FNS every 3 years, when they are revised, or upon a request from FNS.

Two State agencies commented on these provisions. One asked whether standards would have to be submitted each year or only if costs have risen significantly and whether a threshold would be established for increases. The other objected to the requirement to submit methodologies every 3 years and suggested that FNS redistribute FNS

Notice 79-47, which contained methodology guidance and examples.

In response to comments received and the desire to eliminate burdensome mandates, we would remove the requirement for annual submission of the amounts of the standards. Under this proposal, in new 7 CFR 273.9(d)(6)(ii), State agencies would be required to review standards periodically, make adjustments, and to notify FNS if the amount changes. They may, at their option, establish thresholds for making adjustments. We would also require that methodologies be submitted for approval when a standard is developed or changed. We plan to provide guidance on methodologies similar to FNS Notice 79-47. In the interim, we will make copies of the Notice or similar guidance available for distribution upon request.

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 Act of 1981 (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 ESE rule published November 22, 1994, we proposed to revise 7 CFR 273.9(d)(6)(ii) to clarify and simplify 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.

One proposed change in the ESE rule would have extended use of the HCSUA to households that live in separate residences but share a single utility meter. For example, there may be two separate houses on a lot that share one gas meter. Under current policy, if two households live separately but have one meter, the households are prohibited from sharing the HCSUA, and the State agency cannot grant the HCSUA to both households even though both incur heating or cooling costs separately from their rent. Under the ESE proposed change, the State agency was required to grant the full heating or cooling standard to both households if both incur or anticipate incurring out-of-pocket heating or cooling expenses separately from their rent or receive or anticipate receiving LIHEA. Five commenters supported the proposal, and under this rule both households would be entitled to the full HCSUA.

Under another proposed change in the ESE rule, 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 commenter suggested that all households that incur heating or cooling costs as part of their rent should be allowed to use the HCSUA because all landlords who include heating or cooling costs in the rent are passing the cost on to the renter. The State agency believes it is cumbersome and error-prone to require verification from the landlord concerning the "flat amount" that is charged for heating or cooling. We realize that State agencies may experience some problems in verifying whether a particular household incurs a heating or cooling expense separately from the rent amount. However, 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. Therefore, only those households with an identifiable heating or cooling expense may use the HCSUA. We have considered the comments and are including the ESE proposed rule

changes regarding the entitlement of renters to the HCSUA with minor revisions for clarity in this proposed rule at new 7 CFR 273.9(d)(6)(iii).

Three comments were received concerning residents of public housing and entitlement to the HCSUA. Two State agencies requested that residents of public housing be allowed the HCSUA and one suggested that "public housing" be defined. One commenter suggested that the rule clarify that households in public housing that incur a heating or cooling expense separately from their rent (not just for excess usage) are entitled to the HCSUA. As explained in the preamble to the proposed ESE rule (59 FR 60088), households in public housing that incur only the cost of excess usage are not allowed to use an HCSUA. Section 5(e)(7)(C)(ii)(II) of the Act prohibits State agencies from allowing the HCSUA to households in a public housing unit which has central utility meters and charges households only for excess heating or cooling costs. However, to address State agency concerns and to simplify administration we are proposing that State agencies may elect to include excess heating and cooling costs in the LUA and offer the lower standard to public housing residents. Households in public housing that incur an out-of-pocket expense for heating or cooling that is other than an expense for excess usage would be entitled to use the HCSUA. As used in the proposed new paragraph (d)(6)(iii), "public housing" refers to housing provided by local Public Housing Authorities under provisions of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1401, *et seq.*

The ESE proposed rule would have allowed State agencies to anticipate entitlement to an annualized HCSUA based on the expectation that the household would incur heating or cooling costs or receive a LIHEA payment in the next heating or cooling season. This change was intended to reduce the problems associated with determining when a household is entitled to an annualized HCSUA. Under the ESE rule proposal, a household that incurs or expects to incur out-of-pocket heating or cooling costs during the next heating or cooling season (except a household in public housing with a central meter where the household is billed only for excess usage) would be entitled to an HCSUA regardless of when the certification period begins or ends. The ESE rule further proposed that the household would continue to be entitled to the HCSUA until it no longer expects to incur heating or cooling costs during the

next heating or cooling season. The State agency would be required to reexamine a household's entitlement to the HCSUA at recertification, when the household moves, or when the household voluntarily reports a change affecting entitlement to the HCSUA.

In response to comments and the desire to increase State agency flexibility in using utility standards, this new proposal does not contain the changes proposed in the ESE regarding anticipation of entitlement to an HCSUA. Instead, this proposed rule in 7 CFR 273.9(d)(6)(iii) would allow State agencies the discretion to develop and use whatever procedures they deem appropriate so long as they comply with the requirements of the Act and the LIHEA Act regarding use of an HCSUA. The following requirements of the Act and the LIHEA Act are 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.

As indicated above and in the preamble to the proposed ESE rule (59 FR 60089), provisions of LIHEA control (without specifically repealing) sections 5(e)(7)(iv)(I) through (IV) of the Food Stamp Act which provides 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 would be included in new paragraph (d)(6)(ii)(C).

The proposed ESE rule provided that households receiving indirect energy assistance other than LIHEA must incur an out-of-pocket expense to qualify for the HCSUA. One State agency commented that households receiving direct non-LIHEA energy assistance, such as utility reimbursements from the Department of Housing and Urban Development (HUD), should be entitled to the HCSUA regardless of whether they incur out-of-pocket utility expenses. The State agency asked that the term "indirect" be removed from the final ESE rule because it could create the impression that HCSUA entitlement is affected by the method in which non-LIHEA energy assistance is received. In response to this comment, we are including 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.

However, there is a distinction in Program regulations between entitlement to a deduction for an expense paid directly by the household and an expense paid by a vendor payment if the vendor payment is excluded from income consideration. As provided in 7 CFR 273.10(d)(1)(i), in all

cases except vendored assistance provided under the LIHEA Act, a deduction is not allowed for an expense paid by a vendor payment that is excluded from income. The LIHEA Act requires that households receiving LIHEA payments be treated as if they had incurred the expense. HUD utility reimbursement payments and some other utility assistance are excluded from income and there is no legislative provision requiring that households receiving these payments be treated as if they had incurred the expense. If a heating or cooling expense is paid by an excluded vendor payment other than a LIHEA payment, the household is not entitled to the HCSUA unless the household incurs an expense that exceeds the amount of the payment. We agree with the commenter that this area of the proposed ESE rule needed clarification and have attempted to clarify the provision in this rule.

In summary, this proposed rule would amend 7 CFR 273.9(d)(6)(iii) to provide increased State agency flexibility in applying the requirements of the Act and the LIHEA Act regarding entitlement to an HCSUA.

We are proposing 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. We are proposing 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.

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).

As indicated in the preamble to the ESE rule (59 FR 60092), current policy is that households may choose between actual expenses and a standard when they move. We proposed that the redetermination of entitlement to a standard when a household moves would not be considered a "switch."

Four State agencies supported this provision in their comments. One of these recommended that it would be preferable to remove the switching provision from the regulations. However, the limitation on changing from actual costs to a standard or vice versa is contained in section 5(e) of the Food Stamp Act and cannot be removed by regulation. Another commenter supported the proposal but requested that the rule be clarified to indicate that the household can opt for either the standard or actual costs when it moves.

The proposed ESE rule provision to require a State agency to provide an opportunity for a household that moves to select either the standard or actual costs at the new address is included in this proposed rule in new paragraph (d)(6)(iii)(D) with clarification.

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 propose 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.

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.

The ESE proposed rule would have revised paragraph (d)(6)(viii) to provide that households living together and sharing expenses could claim actual costs or a share of a standard. It would have prohibited State agencies from allowing households to use a combination of actual costs and a share of the standard. That is, State agencies could not allow one household to claim a share of the utility standard and allow another household sharing the expense to claim actual costs.

Four of the eight comments we received on this provision supported it. Two State agencies objected to the requirement to prorate the telephone allowance and recommended that this be a State agency option. One State agency did not see how the proposal would simplify the policy regarding households that live together and share heating or cooling costs. The State agency suggested that each household be allowed the full standard. One State agency objected to the provision prohibiting State agencies from mixing a share of the standard and actual costs because the cases involved might be handled by different eligibility workers.

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 are not proposing to regulate in this area.

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 area. This paragraph would be removed since the amounts are now specified in the law.

Proration of benefits at recertification—7 CFR 273.10(a)

Current regulations at 7 CFR 273.10(a)(1)(ii) provide that 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 one month, fiscal or calendar depending on the State's issuance cycle, during which the household was not certified. By revising section 8(c)(2)(B) of the Act to provide that "initial month" means the first month for which an allotment is issued to a household following any period in which the household was not certified, section 827 of PRWORA reinstated the requirement to prorate benefits which existed prior to the Mickey Leland Childhood Hunger Relief Act (Pub. L. 104-624). Under the new statutory provision, benefits are prorated 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 propose to amend 7 CFR 273.10(a)(1)(ii) and 7 CFR 274.10(a)(2) to provide that for all other households "initial month" means the first month for which a household is certified following any break in participation.

Certification periods—7 CFR 273.10(f)

Under current regulations at 7 CFR 273.10(f), certification periods are assigned according to the stability of a household's circumstances. Households consisting entirely of unemployable or elderly individuals with very stable income are certified for up to 12 months, provided other household circumstances are expected to remain stable. Current regulations are based on Section 3(c) of the Act (7 U.S.C. 2012(c)), which, prior to enactment of PRWORA, provided specific

certification period requirements depending on the type of household.

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 have granted waivers to several State agencies to allow certification periods of 24 months for households consisting entirely of elderly or disabled members with no earned income. These waivers will no longer be necessary since section 801 increases State agency flexibility to assign 24-month certification periods to households whose only adult members are elderly or disabled. However, Section 801 also amended the Act to remove the Department's authority to waive the requirements of the Act concerning certification periods. Therefore, we will no longer be able to grant waivers of the 12-month certification period limit for households that are not elderly or disabled. We note that the language in the law provides that all adult members must be elderly or disabled rather than the language in the waivers which provided that all members had to be elderly or disabled. Therefore households in which all adult members are elderly or disabled may be certified up to 24 months even if there are children in the household.

Accordingly, we propose to amend 7 CFR 273.10(f) to reflect the new certification period requirements of PRWORA. We propose that households cannot be certified for no more than 12 months, except households in which all adult members are elderly or disabled may be certified for no more than 24 months, and that the State agency must have at least one contact every 12 months with each certified household. Therefore, if a household in which all adult members are elderly or disabled is certified for 18 months, the State agency must have 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.

In approving waivers to allow 24-month certification periods for elderly or disabled households, we included a special condition for treatment of one-time medical expenses. Current regulations at 7 CFR 273.10(d)(3)

provide that households reporting one-time-only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of the certification period. This provision assumes a certification period of no more than 12 months. Averaging an expense over more than 12 months could result in a very small expense each month. Therefore, we required as a condition of waiver approval that State agencies give the household three options for budgeting the expense. We propose to include those options in 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 (a) budget the expense in one month, (b) average the expense over the remainder of the first 12 months of the certification period, or (c) 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. This guarantees that households will not be adversely affected because averaging the cost over more than 12 months would have a negligible benefit impact in each month. A reference to the budgeting options is also proposed to be added to 7 CFR 273.10(d)(3) for conformity.

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 monthly reporting households be certified for 6 or 12 months, unless a waiver was granted. We propose to revise 7 CFR 273.10(f) and to remove 7 CFR 273.21(a)(3) to reflect these changes. We also propose to include in the new 7 CFR 273.10(f)(2), the provision at 7 CFR 273.21(t) that monthly reporting households residing on reservations must be certified for 2 years, 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).

We propose 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. We believe the law allows us

to mandate certification periods that are less than 12 months if the household is not required to report child support information monthly or quarterly.

We also propose 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 propose 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 the provision regarding certification period length for these households was removed from the Act by PRWORA.

To provide more State agency flexibility in its day-to-day operations of the Program, we would amend the regulations to add a new paragraph 7 CFR 273.10(f)(4) allowing the State agency to shorten a household's currently assigned certification period under certain circumstances with a notice of adverse action. We have traditionally prohibited shortening certification periods once established, except in the following instances: a PA or GA household's certification period is shortened in accordance with 7 CFR 273.12(f); in accordance with Policy Memo 85-03, the State agency needs to adjust the caseload to more evenly distribute the workload, a household reports a change that indicates that the new circumstances are very unstable, or the household fails to provide required information regarding a change in household circumstances. When a household's certification period is shortened under these circumstances, a notice of expiration must be sent; or for households subject to monthly reporting, a State agency must shorten the certification period with an adequate notice in accordance with 7 CFR 273.21(m).

State agencies have continually argued that there are other situations under which the State agency should have the authority to shorten the certification period and close the case. The situations described by State agencies over time have been: a household is not using its benefits timely (i.e., not drawing down on their EBT account or not redeeming their Authorization to Participate card for coupons); a household is suspected of trafficking or otherwise misusing benefits; a household is not reporting earned or unearned income properly; a change in program operations (such as converting the caseload to a new

computer system) warrants the adjustment of certification periods of all or part of a State agency's caseload; or the State agency wants to align food stamp certification periods with the certification periods of other programs.

We have carefully considered the current policy in light of State agency concerns and our current statutory authority. To recap the pertinent statutory provisions, section 11(e)(4) of the Act (7 U.S.C. 2019(e)(4)) provides that the State agency must issue a notice of expiration to households prior to the start of the last month of the assigned certification period. Section 11(e)(10) of the Act (7 U.S.C. 2019(e)(10)) provides that the State agency must issue a notice of adverse action to reduce or terminate a household's benefits within an assigned certification period. Further, if the household timely requests a hearing to contest the proposed reduction or termination of benefits, the State agency must continue benefits at the level authorized immediately prior to the notice of adverse action. Once continued, benefits will remain at the prior level until a hearing official issues an adverse decision or the certification period ends, whichever comes first. These statutory provisions act independently of one another. In other words, section 11(e)(4) of the Act contemplates that States will use the notice of expiration to advise a household that its certification period is ending. Section 11(e)(10) of the Act contemplates that once a household receives notification that it is authorized for benefits, States will use the notice of adverse action if it becomes necessary to reduce or terminate benefits within an assigned certification period. We have come to believe that the current practice of shortening certification periods with the notice of expiration is not the best reading of section 11(e)(10) of the Act. Use of the notice of expiration in the situations noted previously improperly shortens the period of continued benefits the household is entitled to receive had it instead received a notice of adverse action. Accordingly, we are proposing to eliminate the use of the notice of expiration as a vehicle for shortening certification periods, with one exception, which we will discuss below. Despite our concerns over the use of the notice of expiration, we will not require State agencies to change their procedures pending issuance of final rules on this issue.

We propose to retain the long-standing procedure for adjusting the certification periods of households leaving the TANF rolls, with a modification. Current 7 CFR 273.10(f)(4) requires that State agencies adjust food

stamp participation of TANF leavers with a notice of adverse action when it is clear that changes in the household's circumstances require a reduction or termination of benefits. In this instance, the State agency already has sufficient information about the household to enable a seamless transition to nonassistance status. Current 7 CFR 273.10(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 some cases, the State agency may need only one or two pieces of information or documentation to determine continuing eligibility; in others, a more thorough review of the circumstances may be in order, depending on the level of information available in the case file. We believe 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 notice of adverse action may be an appropriate option. However, there are instances where the changes in circumstances may be extensive and questions concerning continuing eligibility would not be resolved easily through a limited contact with the household. In this regard, a household receiving TANF participates in the Program based on categorical eligibility. Eligibility is deemed because of receipt of TANF, and not necessarily verified as in the case of nonassistance households. Thus, when receipt of TANF assistance ends, the household may be considered to be more closely in the position of a new applicant for food stamps. The State agency might not have collected information about or considered eligibility factors pertinent to nonassistance households in the initial certification process. Factors of eligibility not pertinent to the eligibility of a categorically eligible household now may become relevant. We feel that this situation justifies use of the notice of expiration, in lieu of the notice of adverse action. Closing the case with a notice of expiration allows the State agency to request that the household report for an interview and recertification in a non-confrontational way. However, we are proposing 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 a household must take to continue its eligibility. This two-step procedure is discussed in detail in the following paragraph. States have used the procedures outlined in 7 CFR 273.10(f)(5) since the implementation of the Food Stamp Act of 1977. We encourage public comment on the continuing workability of these procedures and the possibility of alternatives to the current procedure. Our aim is to find the most effective way to allow States to continue to provide nutritional support for families leaving TANF.

Outside the context of transitioning TANF households to nonassistance status, we believe that State agencies should be allowed to require households to explain changes in household circumstances during a certification period, especially in suspected intentional Program violation situations, and shorten certification periods if warranted by no response or an unsatisfactory response from the household. Therefore, we propose to consolidate in new paragraph (f)(4) most situations where shortening the certification period would be allowed. The vehicle for early closure of cases would be the notice of adverse action. State agencies may no longer use the notice of expiration to shorten certification periods for the reasons cited previously. The new paragraph provides 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. We considered other situations where States felt that they needed authority to close food stamp cases earlier than originally authorized. However, we determined that only the instances listed above rose to a level of urgency requiring early termination of benefits.

The proposal limits such action to those situations specifically described here to ensure that State agencies apply this new policy only under the most compelling circumstances. We are proposing 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 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. After hearing from the household, State agencies may also find that no further action is required or that benefits may be adjusted without shortening the assigned certification period. We are also proposing conforming changes to new 7 CFR 273.10(f)(2) and 7 CFR 273.11(g)(5) in light of the above.

Lastly, under the proposal in paragraph (f)(5), we would continue to prohibit lengthening of a household's current certification period once it is established. The lengthening of certification periods could result in some households continuing to receive benefits that they should not. FNS would continue to consider waiver requests from State agencies to lengthen assigned certification periods. Some State agencies have requested and have been granted a waiver by FNS to lengthen certifications, usually due to a specific one-time problem situation such as implementing a new computer system. It should be noted, however, that PRWORA limits certification periods to 12 months, except for households in which all adult members are elderly or disabled. Therefore, FNS cannot allow extension of certification periods beyond 24 months for households in which all adult members are elderly or disabled or beyond 12 months for other households. This limitation is reflected in the proposed language.

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. These procedures for using standard estimates of costs for households with self-employment from boarders or day care were added to the regulations in a final rule dated October 17, 1996 (61 FR 54318). In this rule, we propose to consolidate allowable costs of producing self-employment income and include them in a revised paragraph (b).

To simplify the certification process and respond to State agency requests for increased flexibility, we would add in new paragraph (b)(3)(iii) 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.

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 propose 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 are soliciting comments on this proposed procedure for submission of State agency requests and suggestions for other methods.

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 propose that State agencies, rather than households, must determine whether to use actual costs or another approved method to determine self-employment expenses.

We also propose 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 would 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. We would not include in the proposed paragraph (a) the provision of current paragraph (a)(5) regarding certification periods for certain self-employment households because it is no longer necessary, as discussed earlier in this preamble under the section title "Certification periods."

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 would eliminate these prescriptive requirements in favor of letting State agencies determine the appropriate way to handle these shelter expenses. The provision of current paragraph (b)(1)(ii) allowing options for determining the cost of doing business

for households with boarders would be included in proposed new paragraph (b)(3)(ii) and modified to remove overly prescriptive language.

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 propose to renumber paragraph (c)(3) as (c)(4), to remove the provisions regarding ineligible aliens from (c)(2), and 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. We propose to list the categories of aliens eligible under the Act in new paragraphs (c)(3)(i)(A) through (D). Proposed paragraph (c)(3)(i) 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.

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 propose 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.

Additional categories of aliens were made ineligible for food stamp benefits by PRWORA, 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. The treatment of the income and resources of these additional categories of ineligible aliens were not addressed by PRWORA. Congress did not grant State agencies statutory authority to count all or all but a pro rata share of the income of aliens made ineligible by PRWORA. 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. Therefore, we have examined various options for counting the resources and income of those categories of aliens newly made ineligible by PRWORA.

Current regulations at 7 CFR 273.11(c) and (d) provide several methods for the treatment of ineligible household members. Section 273.11(c)(1) provides that all of the income and resources of a household member who is ineligible because of an intentional program violation disqualification or workfare or work requirement sanction must be counted in determining the eligibility and benefits of the rest of the household. Section 273.11(c)(2) provides that all of the resources and all but a pro rata share of the income of a member who is an ineligible alien or who does not provide a social security number must be counted. Section 273.11(d) provides that the resources and income of other ineligible household members, such as an ineligible student, cannot be considered available to the household with whom the individual resides. In addition, 7 CFR 273.1(b)(1) provides that the income and resources of certain nonhousehold members, including roomers and live-in attendants who may participate as separate households, are excluded in determining the eligibility and benefits of the individuals with whom they live.

Data from the Integrated Quality Control System indicate that most of the ineligible lawful permanent resident aliens live in households with children, many of whom are citizens. Further, these ineligible aliens have not violated any Program rules and have been legally

admitted for permanent residence. Therefore, we are proposing 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 are proposing 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.

Congress has explicitly and in plain statutory language specified how the income and resources of aliens ineligible under section 6(f) of the Act should be counted. Conversely, Congress has been silent as to how such counting should be accomplished for aliens eligible under section 6(f) of the

Act but ineligible under PRWORA. With this in mind, we specifically invite comments on our proposal to treat the income and resources of aliens made ineligible by PRWORA.

Residents of Drug and Alcoholic 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. The Department is proposing to revise the title of paragraph (e) and paragraphs (e)(1) through (5) to make the procedures clearer, to take into account electronic benefit transfer (EBT) issuances, and to add two new provisions contained in Section 830 of PRWORA.

Paragraph 11(e)(1) 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. We are proposing that this change be included in new paragraph (e)(1) and that it would only apply 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. We are proposing that a reference to this section be added to new 7 CFR 273(g)(3)(i) as contained in this proposed action which concerns authorized representative for other households.

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 be 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 are proposing that State agencies be allowed 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 are proposing to include this option in new paragraph (e)(4).

We are also taking this opportunity to propose provisions to take into account various EBT systems being used, but still maintain the requirement that the household have access to one-half of its monthly allotment if it leaves the DAA before the 16th of the month.

Under some EBT systems, DAA centers are authorized as retail stores and have point of sale devices (POS) located at the centers. This occurs only if the State has obtained the appropriate waivers from FNS to do so. The amounts transacted through the POS are deposited into the authorized retailer's bank account. The households' EBT cards may be transacted at the facility's POS either by the household or a representative of the DAA. An amount per meal, per day, per week or the full allotment may be transacted at one time. All POS devices must have refund capabilities. Therefore, if the DAA has a POS an amount could be refunded to the household's account and debited from the DAA's daily settlement amount.

Other State EBT systems allow the State agency to transfer, via computer terminal, the allotments of individual households into a single account for the DAA. The DAA is given its own EBT card which it can use at authorized food stores. When a household leaves the facility and this is properly reported, the State can transfer benefits from the DAA aggregated account back to the individual household account. States remain responsible for monitoring DAA facilities. EBT systems help the State in monitoring because States may review the DAA records showing when clients leave the DAA and then review EBT data to determine if benefits had been properly returned to the client's EBT account.

We do not intend to endorse a single EBT design, but any design or State

procedures used as part of the design used to accommodate DAA facilities must assure that a household has access to one-half of its allotment when it leaves the center before the 16th of the month. This policy requirement may be easily met if the State opts to issue semi-monthly allotments. However, the requirement must be met regardless of issuance frequency or the issuance system.

The Department proposes 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.

Sponsored Aliens—7 CFR 273.11(j)

We are proposing 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 that \$1,500 be subtracted from the resources of the sponsor and the sponsor's spouse to be deemed 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 all of

the income and resources of any person who executed an affidavit of support pursuant to section 423 of PRWORA which is a legally binding affidavit. 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.

The income and resources of ineligible sponsored 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).

Section 552 of OCAA amends section 421 of PRWORA to provide two exceptions to the requirement that all of 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 proposes 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 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 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 Immigration and Naturalization Service; 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 reimbursement by the sponsor in the amount of such assistance. If within 45 days after requesting reimbursement, the sponsor has not indicated a willingness to commence payment, legal action may be brought against the sponsor pursuant to the affidavit of support. The Department of Justice (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.

We propose to revise 7 CFR 273.11(j) to incorporate PRWORA, OCAA, and Balanced Budget Act provisions and to streamline the section by increasing State agency flexibility and removing redundant requirements. The following revisions are proposed:

1. Paragraph (j)(1) would be revised to add a reference to section 213A of the INA, which contains requirements for the affidavit of support. We would incorporate the definition of "sponsor" in the definition of "sponsored alien" and remove the definitions of "Date of entry" and "Date of admission" because those terms are no longer relevant to the new deeming requirements.

2. The introductory text of current paragraph (j)(2) would be revised to incorporate the requirement of PRWORA 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 current provision in paragraph (j)(2)(v) requiring that the income and resources of both the sponsor and sponsor's spouse be counted in determining eligibility would be removed. We would 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 Food Stamp Program's monthly gross income eligibility limit

for a household equal in size to the sponsor's household. We would also remove the provision allowing use of the income amount reported for AFDC purposes in current paragraph (j)(2)(ii). We would remove the provision of paragraph (j)(2)(iv) which limits the deemed amount of the sponsors' resources to those in excess of \$1,500 because PRWORA requires deeming all of the sponsors' resources. With the removal of these provisions, current paragraphs (j)(2)(iii) regarding money paid to the alien by the sponsor and (j)(2)(iv) requiring that the income and resources of the sponsor be divided among the number of aliens sponsored by that sponsor would be retained and be designated as paragraphs (j)(2)(i) and (j)(2)(ii), respectively. Current paragraph (j)(2)(vii) which provides specific procedures for handling changes in sponsors would not be included in this proposal in order to provide State agency flexibility. We believe 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 believe there is no additional Federal interest to be protected by providing specific procedures for this particular kind of change.

3. Current paragraph (j)(3) exempts the following aliens from the deeming provisions: aliens whose sponsor is participating in the Food Stamp 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 propose to delete the exemption for aliens whose sponsor is participating in the Food Stamp Program in a separate household from the sponsored alien. We propose to retain the exemption for sponsored aliens who are included in the same household as the sponsor so that the sponsor's income and resources will not be double counted. We propose 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 and to require reporting to Attorney General of each indigent determination.

4. We would 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.

5. We would not include the provisions of current paragraph (j)(5)

which lists specific responsibilities of the State agency for processing cases involving households with sponsored aliens. We believe 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.

6. We would 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 would not include 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 7 CFR 273.2(f)(5). In accordance with amendments made by PRWORA discussed above, the requirement to assist households in obtaining verification is being removed from the regulations.

7. We propose 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).

8. We also propose to remove the provisions of current paragraph (j)(8) concerning overissuances which may result from the use of incorrect sponsor information. Section 423(e) of PRWORA requires State agencies to request reimbursement from sponsors for food stamps issued to sponsored aliens. State agencies shall follow the collection procedures prescribed in INS regulations at 8 CFR 213a.4. Amounts collected shall be transmitted to FNS.

Notice of Adverse Action—7 CFR 273.13

We are also taking this opportunity to clarify what is meant by a Notice of Adverse Action (NOAA) period. Current rules at 7 CFR 273.13(a) require a State agency to provide a household timely and adequate advance notice before taking any action to reduce or terminate a household's benefits, unless exempt from these requirements pursuant to 7 CFR 273.13(b). This procedure allows households an opportunity to request a fair hearing and continuation of benefits until the matter is settled by hearing officials. If the household does not request a continuation of benefits, the adverse action is effective no later than the month following the month in

which the notice of adverse action period expires.

Pursuant to current regulations at 7 CFR 273.13(a)(1), the 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 includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. At the time the regulations were written, the adequate notice period for public assistance cases in most States was 10–15 days. With the increased flexibility under PRWORA for State agencies to make changes in public assistance procedures, we anticipate that many States may make significant changes in the NOAA procedures for public assistance. Such changes could result in shorter or longer NOAA periods. Current regulations restrict using public assistance NOAA periods which are less than 10 days from the date the notice is issued, but do not limit using public assistance notice periods which may be unnecessarily lengthy. The purpose of the current provision is to provide due process for households by establishing a set period of time for household to request a fair hearing and continuation of benefits while awaiting the hearing decision. We do not believe it is appropriate to have a lengthy time period for households to request a fair hearing and continuation of benefits. In addition, longer NOAA periods have the potential to increase Program costs.

In order to ensure that food stamp households have adequate time to reply to a NOAA and request a fair hearing and continuation of benefits while limiting the potential for increased Program costs, we are proposing to change the regulations at 7 CFR 273.13 to clarify that the NOAA period must be a set period of time. Most State agencies currently have a notice period of 10–18 days for household's to respond. There is nothing in our current records to indicate that this time span has caused problems for either households or State agencies. We propose to amend 7 CFR 273.13(a)(1) to clarify that the 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 are not proposing any change to current regulations which provide that the adverse action take

affect 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.

Recertification—7 CFR 273.14

We would propose amendments to 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 would:

1. Remove the second sentence of paragraph (b)(1)(ii) which provides that a model notice of expiration (NOE) is available from FNS. FNS will no longer be developing model forms.

2. Remove paragraph (b)(1)(iii), which encourages State agencies to send a recertification form, interview appointment letter, and statement of required verification with the NOE. Since this was only a recommendation, it is not necessary.

3. Revise paragraph (b)(2)(i) to remove those statements which provide that a new application form must be obtained, that the application can be the same as that used at initial certification or a special recertification form, and that the forms must be approved by FNS. Under PRWORA, as discussed earlier, these procedures are no longer required. We would also remove, as unnecessary or overly prescriptive, those statements regarding the use and/or approval of joint applications for PA, GA and/or SSI households and the use of recertification forms for monthly reporting and nonmonthly reporting households. The proposal would provide: (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 provision of paragraph (b)(2)(ii) that State agencies may request the household to bring the recertification form to the interview or return it by a specified date because it is unnecessary.

5. Revise (b)(3)(i) regarding interviews. State agencies would only be required to have a face-to-face interview once every 12 months. We would add a new sentence to clarify that if a telephone interview is conducted, the State agency must mail the application to the household to obtain the necessary signature.

6. Remove the second sentence of paragraph (b)(3)(ii), which requires the State agency to conduct an annual face-to-face interview at the same time as the PA or GA interview. PRWORA eliminated the requirement for a single food stamp/PA interview.

7. Remove the first two sentences of paragraph (b)(3)(iii). The provisions regarding interview scheduling are unnecessary. We propose 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 second sentence of paragraph (b)(4) regarding the notice of required verification because the notice is no longer required. We propose to add the phrase "and benefits cannot be prorated" to the last sentence for clarification.

9. Revise and simplify the language in current paragraph (e) regarding delays in application processing but retain the current State agency options.

Fair Hearings—7 CFR 273.15

Under Section 11(e)(10) of the Food Stamp Act (7 U.S.C. 2020(e)(10)) and current rules at 7 CFR 273.15(a), the State agency must provide a fair hearing to any household adversely affected by any action of the State agency which affects the participation of the household in the FSP. The current rules at 7 CFR 273.15(j) further specify that the State agency may not deny or dismiss a request for a hearing unless: (1) the request is not received within the allowable time period specified in the rules; (2) the request is withdrawn in writing by the household or its representative; or (3) the household or its representative fails, without good cause to appear at the scheduled hearing.

Section 839 of PRWORA amended Section 11(e)(10) of the Food Stamp Act to specify that, "at the option of a State, at any time prior to a fair hearing determination under this paragraph, a household may withdraw, orally or in writing, a request by the household for the fair hearing. If the withdrawal request is an oral request, the State agency shall provide a written notice to the household confirming the withdrawal request and providing the household with an opportunity to request a hearing."

We are proposing to implement Section 839 by revising 273.15(j) to specify that State agencies may accept an expression (orally or in writing) to withdraw a fair hearing request from the household. State agencies electing to accept oral withdrawals of the fair hearing request must, as required by Section 11(e)(10), provide the household with a written notice confirming the withdrawal.

Simplified Food Stamp Program—7 CFR 273.25

The PRWORA provides State agencies with a number of options to align the rules and procedures between the TANF program and the Food Stamp Program (FSP). One such option available is the Simplified Food Stamp Program (SFSP). Under a SFSP, States may determine food stamp benefit levels for households receiving TANF by using food stamp requirements, TANF rules and procedures, or a combination of the two.

Since the purpose of an SFSP is to simplify program requirements for State agencies as well as for applicants and recipients by aligning TANF and FSP rules and procedures, the Department recognizes that over-regulating the SFSP is contrary to the goals of simplification. As a result, the Department is publishing regulations on the area of the statute where the Department has explicit authority to establish program rules. Except where discretion is provided, the Department believes the statutory language governing the SFSP provides sufficient guidance for State agencies choosing to implement such programs.

Legislation governing the Simplified Food Stamp Program (SFSP) at 7 U.S.C. 2035(c)(3) provides the Department with authority to establish criteria for approving participation in SFSPs for households in which at least one, 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.*). This rulemaking establishes criteria for limits on benefit losses that the Department will implement under this discretionary

authority. The Department is addressing the limit on benefit losses in rulemaking because of its particular impact on households.

Definitions—§ 273.25(a)

For purposes of this section, the following definitions are proposed:

1. Simplified Food Stamp Program (SFSP) means a program authorized under 7 U.S.C. 2035.

2. Temporary Assistance for Needy Families (TANF) means assistance from a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

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.*).

Benefit Reduction for Mixed-TANF Households Under the Simplified Food Stamp Program—§ 273.25(b)

Under the regular Food Stamp Program (FSP), certain deductions have ensured that households receive the appropriate level of food assistance to meet basic nutritional needs. The Department wishes to maintain benefit levels under a SFSP so that mixed-TANF households continue to be able to meet their nutritional needs.

At the same time, the Department supports the objectives for simplification. In establishing approval criteria for mixed-TANF households, the Department considered requiring a medical deduction and/or standard deduction for mixed-TANF households. As the Department's overall objective is to ensure benefits are not reduced beyond a certain point for these households, it was felt that requiring specific deductions was too prescriptive. The Department, therefore, is proposing to limit benefit reductions and provide States with flexibility in deciding the best mechanism for achieving the desired results.

In formulating a threshold for benefit reduction for mixed-TANF households, the Department considered criterion used under demonstration authority which stipulates that projects reducing benefits by more than 20 percent for more than 5 percent of participating households cannot include more than 15 percent of the State's total caseload. The Department, however, rejected this criterion for the SFSP due to several major differences between

demonstration projects and SFSPs. Demonstration projects are time-limited. Consequently, any benefit reductions experienced by households participating in these projects last only for the duration of the project. SFSPs, however, have no time-limit. Any benefit reductions under an SFSP are permanent unless the SFSP is terminated or the household loses eligibility for the SFSP. Demonstration projects also require a research evaluation which provides an opportunity to determine its effects and make changes in program design based on these findings. SFSPs have no comparable evaluation requirements that would provide information necessary to determine any long-term nutritional gains or losses a household may experience under an SFSP. Finally, a methodology similar to that used for demonstration projects which allow large benefit reductions for a small percentage of households has the potential to create inequities in its application. Under demonstration project authority for example, a State would be allowed to operate a project with benefit reductions of 50 percent for 4 percent of its food stamp caseload; however, another State would be prohibited from operating a project in which benefits are reduced by 21 percent for 6 percent of its caseload. It can be argued that the second situation is far less severe than the first in terms of impact on households although the second situation could not be approved.

Since benefits under the regular FSP are based on the Thrifty Food Plan which is the least costly of several food plans developed by the Department that meet nutritional dietary standards, any reductions, regardless of how small, limit a household's access to a nutritious, healthy diet. The Department, however, wishes to balance this concern with the needs of States for flexibility in program design while ensuring compliance with legislative requirements that SFSPs do not increase costs to the Federal government. As a result, the Department is proposing criterion for approving mixed-TANF households that it believes will achieve the appropriate balance between these priorities. 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 or more 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 (5/10/25 percent

benefit reduction requirement). In other words, the Department is proposing a 3-tier standard to limit benefit loss in which: 1) there is no limit on the number of participating mixed-TANF households that can have benefit reductions of 9.99 percent or less of the amount they are eligible to receive under the regular FSP; 2) no more than 5 percent of participating mixed-TANF households can have benefits reduced between 10 and 24.99 percent of the amount they are eligible to receive under the regular FSP, and 3) 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. Under this criterion, FNS does not limit the number of households experiencing a loss of benefits until the reduction reaches the 10 percent level. In addition, the Department believes that benefit reductions of 25 percent or more would significantly impair a household's nutritional security, and is therefore prohibiting reductions of this magnitude.

Since minor reductions in monthly allotments that are relatively small could result in changes exceeding the requisite threshold, the Department is proposing to disregard benefit reductions of \$10 or less from this requirement. For example, an \$8 reduction to a \$40 monthly allotment would not be considered when applying the 5/10/25 percent benefit reduction requirement even though benefits are reduced by 20 percent.

In determining the extent of benefit reduction beyond the regular FSP, the Department will take into consideration the program options that are available to States and any administrative waivers approved for a State. For example, consider when a State uses the legislative option to reduce food stamp benefits under the regular FSP by 25 percent when a household member fails to comply with a TANF requirement. The State then requests to use its TANF procedures under an SFSP to impose a 30 percent reduction in benefits for the same violation. In determining the amount of benefit loss under the State's simplified proposal, FNS would consider the 25 percent reduction that is already allowable under the regular FSP. Consequently, the State's proposal is considered to reduce benefits beyond the regular FSP by 5 percent (the difference between 30 and 25 percent) rather than 30 percent.

If a State chooses to include mixed-TANF households in its SFSP, the State must include in its plan an analysis showing the impact of the SFSP on benefit levels for these participating households and the amount of any

benefit reductions compared to the benefit amount the household would receive under the regular FSP. 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. If it is determined by FNS that a SFSP will reduce benefits for mixed-TANF households beyond the 5/10/25 benefit reduction requirement excluding reductions of \$10 or less, the plan will not be approved for these households. To ensure compliance with the benefit reduction requirement once an SFSP is operational, States must describe in their plans 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 periodically to FNS the amount of benefit loss experienced by mixed-TANF households participating in the State's SFSP. The frequency of the 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. If it is determined that an approved SFSP is reducing benefits beyond the allowable thresholds, the State will need to modify its SFSP to bring it into compliance.

Part 274—Issuance and Use of Coupons

Mail Issuance—7 CFR 274.2

Prior to the enactment of PRWORA, Section 11(e)(25) of the Food Stamp 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 experience transportation difficulties in obtaining benefits. 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 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.

Section 835 of PRWORA deleted direct-mail issuance requirements.

To implement this provision, we are proposing to remove the mandatory mail issuance requirements from State plan requirements at 7 CFR 272.2(d)(1)(xi) and 7 CFR 274.2(g)(1) and (g)(2). This proposal would retain, however, the 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. Under this proposal, the State agency would determine the rural areas which are in need of direct mail issuance. Furthermore, in areas where direct mail issuance would continue, the State agency would determine if any households or geographic areas would be granted an exception. Finally, we are proposing to eliminate State plan requirements at 7 CFR 272.2(d)(1)(xi) although exceptions to direct mail issuance would be reported to FNS as specified at 7 CFR 272.3(a)(2) and (b)(2). 7 CFR 272.3(a)(2) and 7 CFR 272.3(b)(2) require State agencies to prepare and provide staff with Operating Guidelines and to submit their operating guidelines to FNS.

We believe retaining this basic requirement would ensure that benefits are provided to all eligible households in a fair and timely manner as required by Section 835 of PRWORA. Once implemented, EBT will replace the need for mail issuance. More than 70 percent of food stamp benefits are currently issued through an EBT system and, by law, EBT must be implemented in all States nationwide by 2002.

Part 277—Payments of Certain Administrative Costs of State Agencies
Funding for Program Informational Activities—7 CFR 277.4

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 obtain FNS approval as specified in the current rules at 7 CFR 272.2(d)(1)(ix). State agencies with approval from FNS are reimbursed at the 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." We are proposing to implement Section 847 of PRWORA by amending 7 CFR 277.4(b) to prohibit Federal reimbursement for recruitment activities. State agencies seeking reimbursement from FNS for Program informational and educational activities would continue to be required to provide a plan to FNS as specified at 7 CFR 272.2(d)(1)(ix). However, we are interested in receiving comments about the usefulness of this plan and ideas

about how to make the plan approval process more efficient. We would also welcome comments on how to encourage additional State agencies to prepare Program informational plans.

Implementation

The provisions of PRWORA, as amended by the Balanced Budget Act, were effective and required to be implemented by State agencies on the date of enactment of PRWORA (August 22, 1996) for new applicants and no later than the next recertification for recipients, unless otherwise noted. Therefore, we propose that the effective date and required implementation date for sections 402, 807, 808 and 811 of PRWORA would be August 22, 1996 for new applicants and no later than recertification for recipients. Section 402 of PRWORA, as amended by section 510 of the OCAA, specified that the alien eligibility requirements cannot apply until April 1, 1997, to an alien who received benefits on August 22, 1996, unless the alien is ineligible for another reason. State agencies were required to recertify all aliens between April 1 and August 22, 1997.

Section 551 of the OCAA amended section 423 of PRWORA to provide that the sponsored alien provisions of section 421 of PRWORA apply to new legally binding affidavits of support executed on or after a date specified by the Attorney General. The Attorney General issued a notice in the **Federal Register** on October 20, 1997 setting this date as December 19, 1997. The Attorney General determined the PRWORA's legally binding affidavit of support requirement would not apply to an alien who had, prior to December 19, 1997: (1) applied for admission (via application for either an immigrant visa or adjustment of status); and (2) had an official interview with either a consular or immigration officer (62 FR 54346, 54347.) Therefore, the proposed provisions in 7 CFR 273.11(j) of this action apply only to sponsored aliens who had an official interview with a consular or immigration official on or after December 19, 1997, and whose sponsors signed an affidavit of support on or after December 19, 1997.

The provision of section 809 of PRWORA allowing a shelter deduction for homeless households was effective August 22, 1996. There is no required implementation date because the deduction is a State option. However, section 809 removed the provision of section 11(e) of the Act requiring use of a standard shelter estimate for homeless households. Therefore, State agencies were required to discontinue use of the estimate for new applicants on August

22, 1996 and no later than recertification for recipients.

Section 827 of PRWORA, which requires proration of benefits after any break in certification, was effective on August 22, 1996, and required to be implemented at recertification of affected households. Section 847 of PRWORA, which prohibits Federal reimbursement for recruitment activities was effective on August 22, 1996.

Sections 801, 809, 812, 818, 828, 830, 835, 836, 839, 840, and 848 of PRWORA were effective on August 22, 1996 but have no required implementation date because they allow, but do not require, action by the State agency.

Sections 503 through 509 of AREERA are effective on November 1, 1998.

Accordingly, we propose to incorporate into the final rule, at 7 CFR 272.1(g), the effective dates and implementation dates as discussed in the previous paragraphs of this section of the preamble. The provisions of the final rule are proposed to be effective 60 days after publication and must be implemented no later than 180 days after publication. The provisions would have to be implemented no later than the required implementation date for all households newly applying for Program benefits on or after the required implementation date. The current caseload would be required to be converted 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). We would allow a second variance exclusion period under 7 CFR 275.12(d)(2)(vii) for States which first implement option 1 under proposed 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 and Nutrition Service, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

List of Subjects

7 CFR Part 273

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

7 CFR 274

Food and Nutrition Service, Food stamps, Fraud, Grant program-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 proposed to be 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

§ 272.2 [Amended]

2. In § 272.2:

- a. Paragraph (a)(2) is amended by removing the thirteenth sentence; and
- b. Paragraph (d)(1)(xi) is removed and paragraph (d)(1)(xii) is redesignated as paragraph (d)(1)(xi).

§ 272.3 [Amended]

3. In § 272.3:

- a. In paragraph (b)(1), the words “, except the Application for Food Stamps,” and the last sentence of the paragraph are removed; and
- b. Paragraph (c)(5) is removed, and paragraphs (c)(6) and (c)(7) are redesignated as paragraphs (c)(5) and (c)(6), respectively.

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 shall 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 paragraph (b)(1) and revised;
- b. Paragraphs (b)(1)(ii) and (b)(1)(iii) are removed;
- c. Paragraphs (b)(2) and (b)(3) are redesignated as (b)(3) and (b)(4) respectively; and
- d. Paragraph (b)(1)(iv) is redesignated as paragraph (b)(2).

The revisions read as follows:

§ 272.5 Program informational activities.

(b) *Minimum requirements.*

(1) FNS shall encourage State agencies to develop Nutrition Education Plans as specified at 7 CFR 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. In § 272.8:

- a. Paragraph (a)(1) introductory text is amended by removing the word “shall” in the first, second, and third sentences, and adding the word “may” in its place;
- b. Paragraph (a)(1) introductory text is further amended by revising the last sentence;
- c. Paragraph (a)(2) introductory text is amended by removing the word “shall” in the first sentence, and adding the word “may” in its place;
- d. Paragraph (a)(2)(i) is revised;
- e. Paragraph (a)(4) is revised;
- f. Paragraph (a)(5) is removed;
- g. Paragraphs (b), (d), (e), (f), and (j) are removed, and paragraphs (c), (g), (h), and (i) are redesignated as paragraphs (b), (c), (d), and (e), respectively;
- h. Newly redesignated paragraphs (b) and (e) are revised; and
- i. A new paragraph (f) is added.

The addition and revisions read as follows:

§ 272.8 State income and eligibility verification system.

(4) *Agreements.*

(a) *General.* (1) * * * Data exchange agencies, at a minimum, are:

(2) * * *

(i) *Temporary Assistance to Needy Families;*

(4) Prior to requesting or exchanging information with other agencies, State agencies shall execute data exchange agreements with those agencies. The agreements shall specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements shall be 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.

(e) *State Plan of Operation.* The data exchange agreements conducted by the State agency with data sources specified

in paragraph (a)(1) of this section must be included in an attachment to the State Plan of Operation as required in § 272.2(d). This document must include a description of procedures used and agreements with the other agencies and programs specified in paragraph (a) of this section. The State agency shall submit revisions to the attachment if and when changes to the procedures used or agreements with other agencies or programs occur.

(f) *Documentation.* The State agency shall document, as required by § 272.2(f)(6), 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. Paragraph (b)(2)(iii) is amended by removing the words “as outlined in paragraph (d)(1) of this section.”;
- c. Paragraph (d)(1) and the heading of paragraph (d)(2) are removed, and the text of paragraph (d)(2) is redesignated as the text of paragraph (d);
- d. The text of newly redesignated paragraph (d) is amended by removing the words “as described in paragraph (d)(1) of this section.”; and
- e. Paragraph (e)(2) is removed, and paragraph (e)(1) is redesignated as the text of paragraph (e).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

8. In § 273.1, paragraph (f) is removed and paragraph (g) is redesignated as paragraph (f).

9. In § 273.2, the section heading and paragraphs (a) through (j) are revised to read as follows:

§ 273.2 Office operations and application processing.

(a) *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, and households in areas in which a substantial number of members of low-income households speak a language other than 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 shall base food stamp eligibility solely on the criteria contained in the Act and the regulations.

(b) *Application processing.* The application process must include filing and completing an application, being interviewed, and providing verification of certain information.

(1) *Application design.* The State agency, in the development of its food stamp application, may use an electronic format and electronic signature. The design and format of the application are the State agency's responsibility. The State agency may design a separate application for food stamps or include the necessary food stamp information in a multi-program application designed by the State agency.

(2) *Application contents.* The State agency's application must include the following:

(i) All information necessary to comply with the Act and the regulations. Notifications to households may be included on the application itself or a separate document;

(ii) The following nondiscrimination statement must appear on the application itself even if a joint program application is being used.

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, sex, religion, national origin, or political beliefs. Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

"To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

(iii) Written notifications required by other Federal laws, such as, but not limited to those in paragraphs (b)(2)(iii)(A) through (b)(2)(iii)(D). The notifications may be on the application itself or provided with the application on a separate document.

(A) Notification that the Civil Rights Act of 1964 allows for the collection of racial and ethnic data in connection with the Food Stamp Program (as required by § 272.6(g) of this chapter), that the information is voluntary and only serves to help us comply with the Civil Rights Act, and that it will not affect whether the application is approved.

(B) Notification that information available through the 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. This applies only to State agencies which opt to use IEVS.

(C) Notification that the alien status of any household member may be subject to verification by INS through the submission of information from the applicant to INS. The resulting information received from INS may affect the alien's eligibility. This statement is required even if a State agency opts not to use INS' SAVE system for this and other purposes pursuant to the Privacy Act.

(D) Notification of the following facts through a written statement on or provided with the application and any other document where social security numbers are obtained.

(1) The Food Stamp Act requires the collection of social security numbers (SSN) as a condition of food stamp eligibility and failure to provide a SSN may result in the household member who fails to provide a SSN being ineligible to receive food stamps;

(2) Collection of the information is authorized under 42 U.S.C. 2000 and 7 USC 2011-2036; and

(3) A statement of how the social security number will be used and to whom it may be disclosed. The SSN will be used to check the identity of household members, to prevent duplicate participation and to make mass food stamps changes. It will also be used to check information provided by the household against information in food stamp records and against other Federal, state and local government agency computer matching systems. This could mean that employers, banks and other parties may be contacted. SSNs may be disclosed to auditors to assure that cases are properly certified and to the Internal Revenue Service for the purpose of collecting food stamp claims through tax refund offset. SSNs may be released to a court, magistrate, or administrative tribunal when required in civil or criminal proceedings.

(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.

(c) *Filing an application.*

(1) *Filing process.* An adult member of the household, or an authorized representative as provided in paragraph (g) of this section, must sign the application and submit it to the food stamp office. An adult representative of each applicant household must certify in writing, under penalty of perjury, that the information contained in the application is true and that all members of the household are citizens or are eligible aliens. The application may be submitted in person, by fax or other electronic transmission, by mail, or by completing an on-line electronic application in person at the food stamp office. The household may file an incomplete application as long as it contains the applicant's name and address, and is signed by an adult member of the household or the household's authorized representative. 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.

(2) *Household's right to file.* State agencies shall 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 explaining the application processing procedures. State agencies shall 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. For purposes of this paragraph (c)(2), encourage means that State agencies have a responsibility, at a minimum, to inform individuals who express an interest in food assistance, or express concerns which indicate food insecurity, about the Food Stamp Program and their right to apply. The State agency shall make food stamp applications readily accessible to all potentially eligible households and to anyone who requests one. The State agency shall provide an application in person or by mail to anyone who requests one. If a household requests to receive an application through the mail, the State agency must mail the application by the next business day. Households must be allowed to file an application on the same day the household or its authorized representative contacts the State agency food stamp office in person or by telephone during office hours and expresses interest in obtaining food stamp assistance. The State agency may 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. If an application is received at an incorrect office, the State agency shall advise the household when the application is received of the address and telephone number of the correct office and shall forward the application for the household not later than the next business day.

(3) *Withdrawing an application.* A household may voluntarily withdraw its application at any time prior to the determination of eligibility. The State agency shall document in the case file the reason for withdrawal, if any was stated by the household, and that contact was made with the household to confirm the withdrawal. The State agency shall notify the household of its right to reapply for food stamp benefits at any time after it withdraws its current application.

(4) *Notice of required verification.* The State agency must provide each applicant household, at the time of application for certification and recertification, a clear written statement explaining what the household must do

to cooperate in obtaining verification and otherwise completing the application process, and identifying potential sources of required verification. The notice must also inform special needs households of the State agency's responsibility to assist the household in obtaining required verification, provided the household is cooperating with the State agency as specified in paragraph (d)(1) of this section. Such households include, but are 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.

(d) *Household cooperation.*

(1) *Cooperation with application processing.* If the household refuses to cooperate with the State agency in completing the food stamp application process, the State agency shall deny the application at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take the necessary actions that are required to complete the application process. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household cannot be denied. The household must also be determined ineligible if it refuses to cooperate in any subsequent interview or review of its case, including interviews or reviews generated by reported changes or discrepancies discovered by the State agency during the certification period, interviews at the time of application for recertification, and quality control reviews. The scheduling of in-office interviews to resolve discrepancies reported or discovered during a household's certification period must be limited to those situations in which the State agency has new information indicating a potential intentional Program violation situation. Refusal to appear for such an interview would result in termination of the case. In all cases, where the State agency determines that benefits will be reduced or terminated, households are entitled to a notice of adverse action, unless exempt, pursuant to the provisions of § 273.13.

(2) *Quality control review.* The household must be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as part of a quality control review. If a household is terminated for refusal to

cooperate with a quality control reviewer, the household may reapply, but cannot be determined eligible until it cooperates with the quality control reviewer. If a household which was terminated for refusal to cooperate with a State quality control review reapplies after 90 days from the end of the annual review period, the household cannot be determined ineligible for the refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(xii) of this section. If a household terminated for refusal to cooperate with a Federal quality control reviewer reapplies after seven months from the end of the annual review period, the household cannot be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with paragraph (f)(1)(xii) of this section.

(e) *Interviews.*

(1) *Face-to-face interview.* Except for households certified for longer than 12 months, households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter. 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. 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. 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 shall not simply review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. The applicant's right to privacy must be protected during the interview. The interview may be conducted separately or jointly with an interview for other types of assistance programs for which the household has applied. If the interview will be conducted in a household's residence, it must be scheduled in advance with the household. Interviews should be scheduled so as to allow the household at least 10 days to provide

requested verification before the end of the 30-day processing period.

(2) *Waivers of the face-to-face interview.* The State agency shall 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. The State agency shall 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.

(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) *Mandatory verification.* Prior to initial certification, State agencies must verify the following information:

(i) *Identity.* The identity of the person making application must be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household must be verified.

(ii) *Residency.* The household's residency must be verified except where verification of residency cannot reasonably be accomplished (such as residency for homeless households, some migrant farmworkers, and households who have recently moved to the area).

(iii) *Social security numbers.* Except for TANF and SSI categorically eligible households described in paragraph (j) of this section, the State agency must verify social security numbers (SSN) reported by households by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency may accept as verified an SSN that has been verified by another program participating in the IEVS described in § 272.8 of this chapter. The State agency cannot delay the certification for or issuance of

benefits to an otherwise eligible household solely to verify the SSN of a household member. If an individual is unable to provide an SSN or does not have an SSN, the State agency must follow the procedures in § 273.6. Newly obtained SSNs must be verified at recertification.

(iv) *Alien eligibility.* The immigration status of aliens must be verified. 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, 1998) 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 alien eligibility determination. 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. If applicable to the alien's eligibility, these factors must also be verified. An alien is ineligible until acceptable documentation is provided unless:

(A) 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.

(B) 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 individual may be certified pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters.

(v) *Disability.*

(A) Verification of a person's disability must be obtained.

(B) To determine if a disabled person qualifies as a separate household under § 273.1(a)(2)(ii), the State agency must use the most recent list of disabilities issued by SSA to determine if a disability is considered permanent under the Social Security Act. If the disability is on the list, the State agency must determine if the person is unable to purchase and prepare meals because of such disability. If the person suffers from a nondisease-related severe, permanent physical or mental disability that is not on SSA's list, and it is obvious to the caseworker that the person is unable to purchase and prepare meals because of the disability, no verification is required. If it is not obvious to the caseworker, the caseworker must require a statement from a physician or licensed or certified psychologist certifying that the individual is unable to purchase and prepare meals because the individual suffers from one of the disabilities on the SSA list or other nondisease-related, severe, permanent physical or mental disability. The elderly and disabled individual (or his or her authorized representative) is responsible for obtaining the cooperation of the individuals with whom he or she resides in providing the necessary income information about the others for purposes of this provision.

(vi) *Gross nonexempt income.* Gross nonexempt income must be verified. However, where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker must determine an amount to be used for certification purposes based on the best available information.

(vii) *Medical expenses.* The amount of medical expenses (including the amount of reimbursements) deductible under § 273.9(d)(3) must be verified. Verification of other factors, such as whether an expense is deductible or entitlement of the person incurring the cost to the medical deduction, is required if questionable.

(viii) *Legal obligation and actual child support payments.* The household's legal obligation to pay child support, the

amount of the obligation, and the monthly amount of child support the household actually pays must be verified.

(ix) *Shelter costs for homeless households.* Homeless households claiming shelter expenses must provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction.

(x) *Utility expenses.* The household must provide verification of utility expenses (for its current home and an unoccupied home) claimed in excess of the standard allowance if the expenses would actually result in a deduction and the State agency does not mandate the use of utility standards.

(xi) *Unverified expenses.* If required verification of an allowable expense cannot be obtained within the 30-day processing time, the State agency must advise the household that its eligibility and benefit level will be determined without allowing the unverified expense. If the household's actual utility expenses cannot be verified within the 30-day processing time, the State agency must use the standard utility allowance, provided the household is entitled to use the standard as specified in § 273.9(d).

(xii) *Refusal to cooperate with QC reviewer.* State agencies must verify all factors of eligibility for households which have been terminated for refusal to cooperate with a State quality control reviewer and which reapply after 90 days from the end of the annual review period. State agencies must verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

(2) *Verification of questionable information.*

(i) Prior to certification, the State agency must verify all factors that could affect the household's eligibility and benefit level, including household composition, if they are questionable. The State agency must establish guidelines to be followed in determining what will be considered questionable information. These guidelines cannot prescribe verification based on race, religion, ethnic background, or national origin; and they cannot target groups such as migrant farm workers or Native Americans for more intensive verification under this paragraph (f)(2)(i).

(ii) If a member's citizenship is questionable, the State agency must verify the member's citizenship 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 was obtained for that program. The member whose citizenship is in question is ineligible to participate until the issue is resolved.

(3) *State agency options.* In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any other factor which affects household eligibility or allotment level. Such mandatory verification policy must be applied to all households on a Statewide basis or throughout a project area and cannot be selectively imposed on a case-by-case basis. The optional verification does not apply in those offices of the SSA which, in accordance with paragraph (k) of this section, provide for the food stamp certification of households containing recipients of Supplemental Security Income (SSI) and social security benefits. However, the State agency may negotiate with those SSA offices with regard to mandating verification of these options.

(4) *Sources of verification.* State agencies must establish their own standards for sources of verification, subject to the provisions of this paragraph (f)(4). Such standards shall emphasize determining the adequacy of the documentary evidence the household provides to support the statement on the application. State agencies shall not limit households to one specific form of verification, if other documents can equally prove its statements. 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. State agencies may use a collateral contact, that is, oral confirmation of a household's circumstances by a person outside of the household, as verification. 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, but shall first apprise the household of the selection and afford the household an opportunity to verify the information using alternate means. Where unverified information

from a source other than the household contradicts statements made by the household, the household must be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. If unverified information is obtained through the IEVS, as specified in § 272.8 of this chapter, the State agency must follow the procedures in paragraph (f)(8)(iv) of this section.

(5) *Responsibility for obtaining verification.* The household has primary responsibility for providing documentary evidence to support statements on the application, reported changes in household circumstances, and statements provided at recertification and to resolve any questionable information. Households may supply verification in person, through the mail, facsimile or other electronic device, or through an authorized representative. State agencies shall not require households to present verification in person at the food stamp office, except as provided in paragraph (d)(1) of this section. The State agency shall accept any reasonable documentary evidence provided by the household.

(6) *Documentation.* The State agency must document the case file to support eligibility, ineligibility, and benefit level determinations. Documentation must be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination. The State agency may store records electronically.

(7) *Verification subsequent to initial certification.* Information required to be verified in paragraphs (f)(1), (f)(2) and (f)(3) of this section must be verified again when changes are reported during the certification period or at recertification which would affect eligibility or the benefit level and when unchanged information becomes questionable.

(8) *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.

(ii) The State agency must take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtained through IEVS which is considered verified upon receipt. Information considered verified upon receipt is social security, SSI, TANF, and Unemployment Insurance Benefits (UIB) information obtained from the agencies administering those programs. If the information about a particular household is questionable,

the information is considered unverified upon receipt, and the State agency must take action as specified in paragraph (f)(8)(iii) of this section.

(iii) Except as noted in this paragraph (f)(8)(iii), prior to taking action to terminate, deny, or reduce benefits based on information obtained through IEVS which is considered unverified upon receipt or questionable, State agencies must independently verify the information. Information that is considered unverified upon receipt may include but is not limited to unearned income information from IRS, wage information from SSA and SWICAs, and questionable information. Except with respect to unearned income information from IRS, if a State agency has information which indicates that independent verification is not needed, such verification is not required.

(iv) Independent verification includes verification of the amount of the resources or income involved and when the household had the resources or received the income. The State agency must obtain independent verification of unverified information obtained from IEVS by contacting the household or the appropriate income or resource source. If the State agency chooses to contact the household, it must inform the household of the information which it has received and provide the household with a reasonable opportunity to respond. If the household fails to respond in a timely manner (or when the household or appropriate source provides the independent verification), the State agency must properly notify the household of the action it intends to take and provide the household with an opportunity to request a fair hearing prior to any adverse action.

(9) Optional Use of SAVE.

Households are required to submit documents to verify the immigration status of 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.

(i) The written consent of the alien is not required for the State agency to contact INS to verify the validity of documents the household presents.

(ii) Pending resolution of discrepancies between the Alien Status Verification Index database and information submitted by the household, the State agency must not delay, deny, reduce, or terminate the alien's eligibility for benefits on the basis of the individual's alien status.

(iii) If the State agency determines that the alien is not in an eligible alien status, the State agency must take action, including proper notices to the

household, to terminate, deny or reduce benefits.

(iv) The use of SAVE must be documented in the casefile or other agency records. When the State agency is waiting for a response from SAVE, agency records must contain either a notation showing the date of the State agency's transmission or a copy of the INS Form G-845 sent to INS. Once the SAVE response is received, agency records must show documentation of the ASVI Query Verification Number or contain a copy of the INS-annotated Form G-845. Whenever the response from automated access to the ASVI directs the eligibility worker to initiate secondary verification, agency records must show documentation of the ASVI Query Verification Number and contain a copy of the INS Form G-845.

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

(1) *Application process.* When a responsible member of the household cannot complete the application process, 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. Except for those situations in which a drug and alcoholic 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 application processing purposes 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 (g)(4) of this section contains further restrictions on who can be designated an authorized representative.

(ii) In the event the only adult living with a household is a nonhousehold member as defined in § 273.1(b), the adult may be the authorized representative for the minor household member(s).

(iii) Residents of drug addict or alcoholic treatment centers and group

homes must apply and be certified through the use of authorized representatives in accordance with § 273.11(e) and § 273.11(f).

(2) *Obtaining food stamp benefits.* An authorized representative may be designated to obtain benefits, and the designation should be done at the time of certification. 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 for application processing purposes. 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.* The State agency must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

(i) 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.

(ii) 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.

(iii) 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.

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

(v) 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.

(h) Normal processing.

(1) *Thirty-day standard.* The State agency must provide eligible households that complete the initial application process an opportunity to participate (as defined in § 274.2(b) of this chapter) as soon as possible, but no later than 30 calendar days following the filing date. The filing date is the date an application that contains the applicant's name and address and the signature of a responsible member of the household or the household's authorized representative is filed at the correct office. Day one of the 30-day period is the day after the date an application is filed. When a resident of an institution jointly applies for SSI and food stamps prior to leaving the institution in accordance with § 273.1(e)(2), the filing date is the date the applicant is released from the institution. Households that are found to be ineligible must be sent a notice of denial as soon as the decision is made but no later than 30 days following the date of application.

(2) *Delayed actions.* If the State agency cannot act on an application within 30 days because of a delay on its part, the State agency must continue to process the case. If the State agency determines that the household is eligible, the household is entitled to benefits retroactive to the date of application. If the State agency cannot act on the application within 30 days because of a delay on the household's

part, the State agency must either deny the case or hold the case pending for an additional period of time. The State agency may determine the length of the application pending period, provided the period is not more than 2 months in addition to the month of application. If the household caused the delay, the State agency must provide benefits retroactive to the date the household takes the required action.

(3) *Determining cause for delayed actions.* The State agency must determine the cause of a delay in processing using the following criteria:

(i) Delays that are the fault of the State agency include, but are not limited to, the following:

(A) Failure to explore and attempt to resolve with the household any unclear and incomplete information at the interview;

(B) Failure to inform the household of the need for one or more members to register for work and failure to allow the members at least 10 days to complete work registration;

(C) Failure to provide the household with a statement of required verification and failure to allow the household at least 10 days to provide the missing verification; or

(D) Failure to notify the household that it could reschedule a missed interview appointment.

(ii) Delays that are the fault of the household include, but are not limited to, the following:

(A) Failure to cooperate with the State agency in resolving any unclear or incomplete information provided at the interview;

(B) Failure to register household members for work;

(C) Failure to provide missing verification; or

(D) Failure to reschedule a missed interview appointment.

(4) *Combined allotments.* At State agency option, households which apply after the 15th of the month may be issued a combined allotment which includes prorated benefits for the month of application and full benefits for the next month provided that the month of application is an initial month (as described in § 273.10(a)), and the household has completed the application process within 30 days of the date of application and been determined eligible for those benefits. The benefits must be issued in accordance with § 274.2(c) of this chapter.

(i) Expedited service.

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

(i) Households with less than \$150 in monthly gross income, as computed in § 273.10(e), provided their liquid resources do not exceed \$100;

(ii) Migrant or seasonal farmworker households who are destitute, as defined in § 273.10(e)(3), provided their liquid resources do not exceed \$100; or

(iii) Households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and utilities (or utility standard in accordance with § 273.9(d)), or less than the homeless shelter standard if the household is homeless.

(2) *Identifying households needing expedited service.* The State agency shall screen all applications at the time they are filed to identify households entitled to expedited service and shall document their evaluation.

(3) *Processing time.* Households entitled to expedited service must have their cases processed in accordance with the following provisions (except during periods of allotment reductions or suspensions as provided in § 271.7(e)(2) of this chapter).

(i) *Benefit delivery.* The State agency must make benefits available to the household in accordance with § 274.2(b) of this chapter not later than the seventh calendar day following the date the application was filed. If the State agency elects to interview the household outside of the office, the State agency must conduct the interview and make benefits available not later than the seventh calendar day following the date the application was filed (unless the household cannot be reached to schedule the interview).

(ii) *Telephone interviews.* If the State agency conducts a telephone interview and mails the application to the household for signature, the mailing time involved and the time during which the household has the application in its possession is not counted in the seven-day standard.

(iii) *Late determinations.* If the State agency fails to identify a household as being entitled to expedited service at the time the application is filed, but subsequently discovers this, benefits must be made available to the household not later than the seventh calendar day following the date the State agency discovers the household is entitled to expedited service.

(4) *Special procedures.* The State agency must use the following procedures for households entitled to expedited service.

(i) Verification.

(A) *Mandatory verification.* Prior to certification, the State agency must verify the identity of the person making

the application. All reasonable efforts must be made to verify residency, income (including, if appropriate, a statement that the household has no income), and liquid resources within the expedited processing time frame. State agencies may verify other factors as well, but benefits cannot be delayed beyond the delivery standard prescribed in paragraph (i)(3) of this section solely because eligibility factors other than identity have not been verified.

(B) *Postponed verification.*

(1) If a household applies on or before the 15th of the month, any verification that was postponed must be submitted prior to the second month's issuance. If a certification period of longer than one month is assigned, the State agency must issue the second month's benefits within seven working days from receipt of the necessary verification but not before the first day of the second month.

(2) If a household applies after the 15th of the month, verification that was postponed must be submitted prior to the third month's issuance. If a certification period of longer than two months is assigned, the State agency must issue the third month's benefits within seven working days from receipt of the necessary verification information but not before the first day of the third month.

(ii) *Social security numbers.*

Households entitled to expedited service must be asked to furnish or apply for an SSN for each household member prior to the second month's issuance, or if the State agency issues combined allotments as provided in paragraph (i)(5) of this section, prior to the third month's issuance. Those household members who do not meet this requirement must be allowed to continue to participate if they satisfy the good cause requirements specified in § 273.6(d). The household must provide an SSN or proof of an application for an SSN for a newborn within 6 months after the month the baby is born.

(iii) *Work registration.* With regard to the work registration requirements specified in § 273.7, the State agency must, at a minimum, require the applicant to register (unless exempt). The State agency may attempt to register other members within the expedited service time frame.

(5) *Combined allotments.* Households that apply for initial benefits (as described in § 273.10(a)) after the 15th of the month and are eligible to receive benefits for the initial month and the next month may, at the option of the State agency, receive a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of

participation within the expedited service time frame. If necessary, verification must be postponed to meet the expedited time frame. The benefits must be issued in accordance with § 274.2(c) of this chapter.

(6) *Frequency.* There is no limit to the number of times a household can be certified under expedited procedures as long as, prior to each expedited certification, the household either completes the verification that was postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification. The provisions of this section do not apply at recertification if a household reapplies before the end of its current certification period.

(j) *Categorical eligibility.* Households in which each member receives TANF or SSI benefits pursuant to the provisions of paragraph (j)(1) of this section, or receives certain GA benefits pursuant to the provisions of paragraph (j)(2) of this section, are considered to be categorically eligible for food stamps based on their status as recipients of such benefits. For the purpose of the provisions of paragraphs (j)(1) and (j)(2) of this section, individuals are considered recipients of TANF, SSI, or GA benefits if they are actually receiving such benefits, they are authorized to receive such benefits but the actual payments have not been received, the benefits are suspended or recouped, or the benefits are not paid because the grant is less than a minimum benefit level. Residents of institutions who are found by SSA to be potentially eligible for SSI are not considered categorically eligible until such time as a final SSI eligibility determination has been made and they are released from the institution. Individuals not receiving TANF, SSI, or GA benefits who are entitled to Medicaid only are not considered categorically eligible. The food stamp benefit level of categorically eligible households must be computed in accordance with food stamp procedures contained in § 273.10.

(1) *TANF and SSI Households.* Except as provided in this paragraph (j)(1), households in which each member receives SSI or TANF benefits are considered categorically eligible to participate in the Food Stamp Program. Categorical eligibility means that the household is eligible for food stamps without regard to the amount of its resources (whether or not it transferred resources to become eligible) or the amount of its gross and net income. In addition, information regarding the social security numbers of household

members, sponsored alien information, and residency are deemed to be acceptable without verification. A household is not categorically eligible if any member of the household has been disqualified for an intentional Program violation in accordance with § 273.16 or the entire household has been disqualified from the Program for any reason. All other food stamp eligibility criteria apply, including, but not limited to, the definition of a food stamp household in § 273.1, the ineligible alien provisions in § 273.4, and the work requirements of § 273.7. The household must complete the food stamp application process, cooperate in providing necessary information for food stamp purposes and submit required reports.

(i) *Ineligible members.* No person can be included as an eligible member of a categorically eligible household if that person is one of the ineligible household members listed in § 273.1(b)(2).

(ii) *Joint processing.* Households that apply jointly for TANF or SSI and food stamp benefits and whose food stamp eligibility depends on their categorical eligibility status must be issued benefits from the beginning of the period for which TANF or SSI benefits are paid or the original food stamp application date, whichever is later. However, in accordance with § 273.1(e)(2), food stamp benefits cannot be issued to residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution.

(2) *GA households.* Except as specified in paragraph (j)(2)(ii) of this section, households in which each member receives benefits from a State or local GA program which meets the criteria in paragraph (j)(2)(i) of this section are categorically eligible.

(i) *Qualifying GA programs.* The GA program must meet the criteria in paragraph (j)(2)(i)(A) of this section or be certified by FNS in accordance with paragraph (j)(2)(i)(B) of this section.

(A) The program must:

(1) Have income and resource standards which may be separate from or included in the benefit computation and which do not exceed the limits for income and resources of the Food Stamp Program, TANF program, or SSI program. The rules for the GA program apply in determining countable income and resources for purposes of this provision;

(2) Provide GA benefits as defined in § 271.2 of this part; and

(3) Provide ongoing benefits which are not limited to emergency assistance.

(B) If a GA program does not meet all of the criteria in paragraphs (j)(2)(i)(A) of this section, the State agency may request certification of the program by FNS as one that is appropriate for categorical eligibility. In requesting certification, the State agency must submit to the appropriate FNS regional office a description of the program containing, at a minimum, the type of assistance provided, the income and resource eligibility limits, and the period for which the GA is provided.

(ii) *Ineligible households.* A household is not considered categorically eligible if it:

(A) Refuses to cooperate in providing to the State agency information that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in paragraph (d) of this section or § 273.21(m)(l)(ii); or

(B) Is disqualified for failure to comply with a work requirement of § 273.7.

(iii) *Ineligible members.* No person can be included as an eligible member in any household which is otherwise categorically eligible if that person is one of the ineligible household members listed in § 273.1(b)(2).

(iv) *Verification requirements.* In determining whether a household is categorically eligible, the State agency must verify that each member receives PA or SSI benefits, or GA benefits from a GA program that meets the criteria in paragraph (j)(2)(i) of this section; the household has not been disqualified as provided in paragraph (j)(2)(ii); and no individuals have been disqualified as provided in paragraph (j)(2)(iii) of this section.

(v) *Deemed eligibility factors.* When determining the eligibility for a categorically eligible household, all Food Stamp Program provisions apply except the following:

(A) *Resources.* None of the provisions of § 273.8 apply to categorically eligible households except the second sentence of § 273.8(a) pertaining to categorical eligibility and § 273.8(i) concerning transfer of resources. The provisions in § 273.10(b) regarding resources available at the time of the interview do not apply to categorically eligible households.

(B) *Gross and net income limits.* None of the provisions of § 273.9(a) relating to income eligibility standards apply to categorically eligible households, except the fourth sentence pertaining to categorical eligibility. The provisions in § 273.10(a)(10)(i) and § 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) *Residency.* The household's residency is deemed to be acceptable. Verification is not needed.

(D) *Sponsored aliens.* The sponsored alien information is deemed to be acceptable. Verification is not needed.

(vi) *Zero benefit households.* The provision of § 273.10(e)(2)(iii)(A) which allows a State agency to deny the application of a household with three or more members entitled to no benefits because its net income exceeds the level at which benefits are issued does not apply to categorically eligible households. All eligible households of one or two persons must be provided the minimum benefit, as required by § 273.10(e)(2)(ii)(C).

* * * * *

10. In § 273.4:

a. Paragraphs (a) and (c) are revised.

b. Paragraphs (b) and (d) are removed, and paragraph (e) is redesignated as paragraph (b).

The revisions 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 Food Stamp Program unless that person is:

(1) A U. S. citizen;

(2) A U. S. alien national;

(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 (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. 1359) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(4) An individual who is:

(i) 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 beginning August 5, 1964 and ending May 7, 1975;

(ii) The spouse, or surviving spouse of such an individual 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 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; 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 Immigration and Nationality Act (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 United States 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, provided the individual meets the requirements specified in Exhibit B to Attachment 5 of the DOJ Interim Guidance (or any provision of a DOJ final rule superseding Exhibit B to Attachment 5 of the Interim Guidance); 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 worked 40 qualifying quarters as determined under title II of the Social Security Act or can be credited with 40 quarters worked by a parent of the alien before the alien became 18 and/or quarters worked by a spouse of the alien during their marriage and they are still married or the spouse is deceased. 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 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.

(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 United States.

(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 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 United States 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 United States (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 provision is a child who is under the age of 18 or if a full-time student under the age of 22; an unmarried child of a deceased veteran provided the 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.

(H) An individual who on August 22, 1996, was lawfully residing in the United States, and is now receiving benefits or assistance for blindness or disability (as specified in § 271.2).

(I) An individual who on August 22, 1996, was lawfully residing in the United States and was 65 years of age or older on that date; or

(J) An individual who on August 22, 1996, was lawfully residing in the United States and is now under 18 years of age.

* * * * *

(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 on behalf of the alien pursuant to section 213A of the INA.

(2) *Deeming.* For purposes of determining the eligibility and benefit level of a household of which a sponsored alien is a member, all of the income and resources of the sponsor and the sponsor's spouse, if living with the sponsor, must be deemed to be the unearned income and resources of the sponsored alien. The income and resources must be deemed until the alien gains United States citizenship or has worked or can be credited with 40 qualifying quarters of work as determined under title II of the Social Security Act.

(i) The monthly income of the sponsor and sponsor's spouse deemed to be that of the 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.

(ii) Money paid to the alien by the sponsor or the sponsor's spouse will be considered as income to the alien only to the extent that it exceeds the amount deemed to the alien in accordance with paragraph (c)(2)(i) of this section.

(iii) Resources of the sponsor and sponsor's spouse deemed to be that of the alien must be the total amount of their resources as determined in accordance with § 273.8.

(iv) If a sponsored alien can demonstrate to the State agency's satisfaction that his or her sponsor sponsors other aliens, the income and resources deemed under the provisions of paragraphs (c)(2)(i) and (c)(2)(iii) of this section must be divided by the number of such aliens that apply for or are participating in the program.

(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). The only amount that will be deemed 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. 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, provided such individual meets the requirements specified in Exhibit B to Attachment 5 of the DOJ Interim Guidance (or any provision of a DOJ final rule superseding Exhibit B to Attachment 5 of the Interim Guidance) and the battered individual does not live with the batterer. After 12 months, the batterer's income and resources will not be deemed 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) *Sponsored alien's responsibilities.* During the period the alien is subject to deeming, the 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 the paragraphs (c)(2)(i) through (c)(2)(iii) of this section. The 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 entire amount of income and resources will be attributed to the applicant alien until this information is provided. The alien is also to be 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. Such changes will be handled in accordance with the timeliness standards described in § 273.12.

(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 eligibility of any remaining household members must be determined. The income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) must be considered available in determining the eligibility and benefit level of the remaining household members in accordance with paragraph (c) of this section. 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 information or verification is subsequently received, the State agency must act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as needed sponsor information or verification is provided.

11. In § 273.8:

a. Paragraphs (c)(3), (e)(18) introductory text and (h)(6) are revised.

b. A new paragraph (h)(1)(vii) is added.

The revisions and addition read as follows:

§ 273.8 Resource eligibility standards.

(c) *Definition of resources.* * * *

(3) For a household containing a sponsored alien, the resources of the sponsor and the sponsor's spouse shall be deemed in accordance with § 273.4(c)(2).

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

(18) State agencies shall 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. A resource shall be so identified if its sale or other disposition is unlikely to produce any 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 shall be made in accordance with the provisions of paragraph (h) 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 following definitions shall be used in developing these standards:

(h) *Handling of licensed vehicles.*

(i) * * *

(vii) 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 one-half of the applicable resource limit for the household.

(6) In summary, each licensed vehicle shall be handled as follows: First, the vehicle shall be evaluated under paragraph (h)(1) of this section to determine if it is excludable from resources as an income producer, a home, necessary to transport a disabled household member, necessary to carry fuel for heating or water for home use, or its value is inaccessible in accordance with paragraph (e)(18) of this section. Any vehicle excluded under paragraph (h)(1) of this section shall be deemed to have no countable value as a resource affecting eligibility; thus, such a vehicle need not be evaluated further under either paragraph (h)(3) or paragraph (h)(4) of this section. If not so excluded, however, a vehicle shall be evaluated under paragraph (h)(3) of this section to determine the amount, if any, by which fair market value exceeds \$4,650 ("excess fair market value"). The vehicle shall also be evaluated under paragraph (h)(4) of this section to see if it is exempt from having its equity value assessed as the household's only vehicle or as a second vehicle necessary for employment reasons. If the vehicle is equity exempt, the excess fair market value shall be counted as a resource. If the vehicle is not equity exempt, the countable equity value shall be determined, and the greater of the

excess fair market value and the countable equity value shall be counted as a resource.

* * * * *

12. In § 273.9:

a. Paragraph (b)(1)(v) is revised.

b. Paragraph (b)(4) is revised.

c. Paragraph (c)(1)(i)(E) is removed and paragraph (c)(1)(i)(F) is redesignated as paragraph (c)(1)(i)(E).

d. 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)(91)(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.

e. The first sentence of paragraph (c)(7) is amended by removing the number "22" and adding the number "18" in its place.

f. A new sentence is added before the last sentence in paragraph (c)(8).

g. Paragraph (c)(11) is revised.

h. Paragraphs (d)(6), (d)(8) and (d)(9) are removed.

i. Paragraph (d)(5) is redesignated as paragraph (d)(6) and paragraph (d)(7) is redesignated as paragraph (d)(5).

j. Newly redesignated paragraph (d)(6)(i) is revised in its entirety.

k. The heading and introductory text of newly redesignated paragraph (d)(6)(ii) is revised.

l. Newly redesignated paragraph (d)(6)(ii)(C) is revised.

m. A new paragraph (d)(6)(iii) is added.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

(b) *Definition of income.* * * *

(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 by 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 shall be deemed in accordance with § 273.4(c)(2).

* * * * *

(c) *Income exclusions.* * * *

(8) * * * TANF payments made to divert a family from becoming

dependent on welfare may be excluded as a nonrecurring lump-sum payment if no more than one payment is anticipated in any 12-month period to meet needs that do not extend beyond a 4-month 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. * * *

(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.*) and

(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) *Income deductions.* * * *

(6) *Shelter costs.*

(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:

* * * * *

(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; garbage and trash collection; the basic service fee for one telephone (including tax on the basic fee); and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included. * * * * *

(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, and garbage or trash collection. The LUA must include expenses for at least two utilities other than telephone. 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 periodically and make adjustments to reflect changes in costs. State agencies may opt to establish thresholds for making adjustments. 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. 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.

* * * * *

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".

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)(I) and (e)(1)(i)(J), 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) *Month of application.*

(1) *Determination of eligibility and benefit levels.* * * *

(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 30 days during which the household was not certified for participation. * * *

* * * * *

(d) *Determining deductions.* * * *

(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) *Calculating net income and benefit levels.*

(1) *Net monthly income.*

(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, 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. 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.* Households residing on a reservation that are required to submit monthly reports in accordance with § 273.21 must be certified for 24 months unless the State agency obtains a waiver from FNS. Any request for a waiver shall include justification for the shorter period, quality control error rate information for the affected households, 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) *Households eligible for a child support deduction.* The State agency may certify for no longer than 3 months households eligible for a child support deduction which have no record of regular child support payments or of child support arrearages and which are not required to report child support payment information periodically (monthly or quarterly) during the certification. The State agency may certify for no longer than 6 months households with a record of regular child support and arrearage payments which are not required to report payment information periodically during the certification period. The State agency may certify for no longer than 12 months households required to report child support payment information monthly or quarterly.

(4) *Shortening certification periods.* (i) The State agency may shorten the certification period with a notice of adverse action under the following conditions *provided* the State agency has afforded the household at least 10 days to respond to a previously issued written request for a contact with the State agency to clarify its circumstances:

(A) The State agency has information indicating that a household is not reporting earned or unearned income properly;

(B) The State agency has information indicating the household has become ineligible;

(C) A household reports a change that indicates that the new circumstances are very unstable; or

(D) The household fails to provide adequate information regarding a

change in household circumstances other than income.

(ii) If the household does not respond, does not provide sufficient information to clarify its circumstances, or agrees that changes in its circumstances warrant filing a new application, the State agency may issue a notice of adverse action as described in 273.13 which shortens the certification period and explains the reasons for the action.

(5) *Lengthening certification periods.* State agencies are prohibited from lengthening a household's current certification period once it is established. FNS will consider waiver requests from State agencies to lengthen certification periods pursuant to § 272.3(c) of this chapter for up to 24 months for households in which all adult members are elderly or disabled and up to 12 months for other households.

- * * *
- 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, 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) Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

(ii) Net losses from previous periods;

(iii) 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);

(iv) Depreciation; and

(v) 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) *Treatment of income and resources of certain nonhousehold members.* * * *

(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 eligibility and benefit level of any remaining household members of a household containing an ineligible alien must be determined 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) shall 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; or

(E) Whose deportation or removal has been withheld in accordance with section 243 of the INA.

(ii) For an ineligible alien within a category described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(E) 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)(E) 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 in paragraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this section.

(iii) For an alien who is ineligible under § 273.4(b) because the alien's household indicates inability or unwillingness to provide documentation of the alien's alien 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 paragraph (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 income of the ineligible aliens must be computed using the income definition in § 273.9(b) and the income exclusions in § 273.9(c).

(v) The resources and income of an ineligible sponsored alien must include the resources and income of the sponsor and the sponsor's spouse.

* * * * *

(e) *Residents of drug addict and alcoholic 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).

(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) Residents of a group living arrangement.

(1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2) 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) 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 coupon allotment 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 stamps are used for meals intended for that resident.

(g) Shelters for battered women and children.

(5) State agencies shall take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action shall include acting on the reported change in accordance with § 273.12 by issuing a notice of adverse action in accordance with § 273.13.

15. In § 273.12, paragraph (f)(5) is revised as follows:

§ 273.12 Reporting Changes.

(f) PA and GA households.

(5) 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 State agency does not have any information on the income of the new household member), the State agency shall take the following action:

(i) Where a PA notice of adverse action has been sent, the State agency shall wait until the household's 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 its PA benefits are continued pending the appeal, the household's food stamp benefits shall be continued at the same basis.

(ii) If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its PA benefits, the State agency shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration

shall also explain to the household that its certification period is expiring because of changes in its circumstances which may affect its food stamp eligibility and benefit level. At its option, the State agency may follow the procedure set forth at § 273.10(f)(4) to shorten certification periods.

16. In § 273.13, the first sentence of paragraph (a)(1) is revised to read as follows:

§ 273.13 Notice of adverse action.

(a) Use of notice. * * *

(1) The notice of adverse action is considered timely if the advance notice period conforms with that period of time defined by the State agency as an adequate notice for its public assistance caseload, provided that the period is no less than 10 days and no more than 18 days from the date the notice is mailed to the date the notice expires. * * *

17. In § 273.14:

a. Paragraph (b)(1) is amended by removing the second sentence of the introductory text of paragraph (b)(1)(ii) and removing 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 removing the first two sentences of paragraph (b)(3)(iii).

d. Paragraph (b)(4) is amended by removing the second sentence and adding the words "and benefits cannot be prorated" at the end of the paragraph.

e. Paragraph (e) is revised.

The addition and revisions read as follows:

§ 273.14 Recertification.

(b) Recertification process. * * *

(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. 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)(4).

(3) Interview.

(i) As part of the recertification process, the State agency must conduct an interview with a member of the household or its authorized representative. At least one face-to-face interview is required every 12 months unless the State agency grants a waiver in accordance with § 273.2(e)(2). If a telephone interview is conducted the State agency must mail the application to the household to obtain the household's signature.

(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.

(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. If the household takes the required action before the end of the certification period, the State agency must reopen the case. If the household takes the required action after the end of the certification period, the State agency may reopen the case and provide benefits retroactive to the date the household takes the required action or it may require the household to reapply.

(3) If a household files an application after the end of the certification period, benefits must be prorated in accordance with § 273.10(a).

18. In § 273.15, paragraph (j) is 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 request is not received within the appropriate time frame;

(ii) The household or its representative fails, without good cause, to appear at the scheduled hearing;

(iii) The request is withdrawn in writing by the household or its representative; or

(iv) The request is withdrawn orally by the household or its representative and the State agency has elected to allow such oral requests.

(2) A State agency electing to accept an oral expression from the household or its representative to withdraw a fair hearing must provide a written notice to the household confirming the withdrawal request and providing the household with an opportunity to request a hearing.

§ 273.21 [Amended]

19. 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 (t)(2) through (t)(5).

20. § 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 assistance from a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

(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.*).

(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.

PART 274—ISSUANCE AND USE OF COUPONS

21. 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 shall 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 shall report any exceptions to direct-mail issuance as

specified under §§ 272.3(a)(2) and (b)(2) of this chapter.

§ 274.5 [Removed]

22. Section 274.5 is removed and reserved.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

23. In § 277.4, paragraph (b) is amended by adding a new sentence to the end of the 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.

* * * * *

Dated: February 18, 2000.

Julie Paradis,

Deputy Under Secretary, Food, Nutrition and Consumer Services.

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RE: Comments on Proposed Rule: "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," 65 Fed. Reg. 10856 (Feb. 29, 2000)

Dear Mr. Waldron:

Thank you for the opportunity to comment on the proposed regulations governing noncitizen eligibility for the Food Stamp Program (FSP). These comments are submitted by the National Immigration Law Center (NILC), a national support center with staff that specialize in immigration law and the public benefits and employment rights of immigrants and their family members. NILC has extensive experience working with immigrants and immigrant communities and is deeply committed to encouraging and facilitating the availability of food stamps to low-income immigrants and to their citizen family members.

INTRODUCTION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, or "the welfare law") and subsequent laws brought about severe restrictions on immigrant eligibility for public benefits. Even after Congress restored eligibility to some immigrants in 1998, almost 600,000 immigrants had lost federal food stamp

According to USDA estimates, approximately 790,000 immigrants had lost eligibility for food

eligibility. Yet, the FSP continues to be an important component of the safety net for many immigrant families. At the end of fiscal year 1997, 793,000 noncitizens continued to participate.

Many citizens in households that contain immigrants also receive food stamps and are directly affected by immigrant-related restrictions and barriers to access. About six of every seven families headed by a non-citizen parent - 85 percent of such families - are "mixed-status" families that include at least one U.S. citizen, typically a child. Among all families with children in the United States, nearly one in ten is a "mixed-status" family.

FSP data show a large decline in food stamp participation among children in immigrant families over the last few years even though the overwhelming majority of them have remained eligible for food stamp benefits. Since welfare reform, immigrant families have become more hesitant to apply for benefits or have any contact with benefits agencies. Between 1994 and 1997, the number of citizen children receiving food stamps who live with legal immigrants fell by 41 percent, compared to a 15 percent decline for children living with native-born parents. To reverse this disturbing trend, food stamp agencies must reduce access barriers faced by immigrants. These include the bureaucratic barriers that are also faced by non-immigrant applicants and beneficiaries; but many immigrant households also are denied and deterred by unfair

stamps by 1998. For these immigrants, the average benefit loss was \$75 a month. The Agricultural Research, Extension, and Education Reform Act, enacted on Nov. 1, 1998, restored benefits to an estimated 210,000 legal immigrants.

Scott Cody, The Effect of Welfare Reform on Legal Permanent Resident Alien Food Stamp Recipients, Mathematical Policy Research, Inc. (Draft: October 1998). Approximately 1.9 million immigrants received food stamps in fiscal year 1996 prior to implementation of the PRWORA changes.

See Michael Fix and Wendy Zimmermann, All Under One Roof: Mixed Status Families in an Era of Reform, Urban Institute, June 1999, figure 1.

Many immigrants did not receive food stamps out of fear that they would become a "public charge" and be excluded or removed from the United States. Guidance has been issued that receipt of food stamps and other non-cash assistance will not count against people. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, 28693 (May 26, 1999). Nonetheless, participation rates remain low.

United States Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, Who is Leaving the Food Stamp Program? An Analysis of Caseload Changes from 1994 to 1997, March 1999. See also Michael Fix and Jeffrey S. Passel, Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-1997, Urban Institute, March 1999.

and overly-harsh income-counting and verification practices, lack of confidentiality and fear of INS reporting, and lack of linguistic access.

The proposed rules will have a profound effect on both legal immigrants and their citizen family members. In this regard, we support the very positive proposed state option to not count the income of ineligible immigrants in determining the eligibility of the rest of the household. However, the proposed rules contain some harmful provisions that create unnecessary barriers and will exacerbate the steep drop-out rates. One of the most troubling is the proposal to count a sponsor's income in determining the benefits of citizens and non-sponsored immigrants who live with a sponsored immigrant, even where the sponsored immigrant is ineligible for food stamps. This would result in denial of benefits to thousands of citizen children and eligible immigrants. In addition, the proposed rules regarding verification, immigration status and social security number (SSN) inquiries of non-applicants and the USDA's silence on the importance of linguistic and cultural access would burden immigrant families and lead to further declines in participation by eligible households.

The laws leave the Department of Agriculture (USDA, the Department) with considerable discretion to issue rules that encourage participation by all those who remain eligible. It is imperative that USDA educate and lead states toward FSP policies that do not create unnecessary barriers to receiving food stamps by eligible immigrants and their families. We urge you to adopt the recommendations set forth below which will help to ensure that goals of the Food Stamp Program to serve all eligible hungry people are met.

A. PROVISIONS RELATED TO FINANCIAL ELIGIBILITY OF IMMIGRANT FAMILIES

The welfare law imposed more stringent requirements related to deeming of sponsor income to immigrants with "new" (Form I-864) Affidavits of Support. These Affidavits are required for persons who submit family-based applications for immigration on or after December 19, 1997. Deeming will often render the applicant financially ineligible because the income will be too high to qualify under food stamp income eligibility rules. Whereas under previous law deeming ended after three years, the welfare law extended the deeming period until the immigrant becomes a U.S. citizen or can claim 40 qualifying quarters of work, which can take 10 years or more to accrue.

"Sponsor deeming" applies when the food stamp agency determines the financial eligibility of an immigrant sponsored under an Affidavit of Support. It means that the agency treats the income and resources of the sponsor signing the Affidavit of Support, and the income and resources of the sponsor's spouse, as available income and resources of the immigrant applicant.

The welfare law includes exceptions to deeming for "indigent" immigrants and certain battered spouses and children.

1. Deeming of Sponsor's Income to Non-sponsored Immigrants and Citizen Children (Proposed 7 C.F.R. § 273.11(c)(3)(v))

Under current food stamp rules, a sponsor's income and resources are not deemed to non-sponsored individuals when a sponsored immigrant who lives with the non-sponsored individuals is ineligible for food stamps. The proposed rule would have the sponsor's income and resources deemed to non-sponsored individuals in a sponsored immigrant's household when the sponsored immigrant is ineligible for food stamps. This creates an unnecessary barrier to receipt of food stamps and has the devastating effect of denying food stamps to citizens and eligible immigrants who live in households with ineligible, sponsored immigrants.

Under federal law, sponsors are only obligated to support sponsored immigrants. They are not obligated to support individuals that they do not sponsor. Under such circumstances, it is improper to "deem" the sponsor's income and resources available to non-sponsored citizens and immigrants when sponsors are under no obligation to support them. USDA should strike this provision from the final rule and ensure that a sponsor's income and resources are not deemed to non-sponsored individuals who live with ineligible sponsored immigrants.

2. Deeming of a Sponsor's Gross Income with No Deductions (Proposed § 273.4(c)(2)(i))

USDA is proposing to deem *all* of a sponsor's gross income without any deductions for a sponsor's other financial obligations. The USDA rationalizes this by indicating that section 421(a)(1) of PROWRA provides that, "notwithstanding any other provision of law, the income and resources of the alien must be deemed to include *all* of the income

7 C.F.R. § 273.11(j)(6).

Proposed 7 C.F.R. § 273.11(c)(3)(v).

8 U.S.C. § 1183a.

Indeed, a recent guidance issued by the Immigration and Naturalization Service (INS) states that "The Affidavit of Support places no obligation on a sponsor or joint sponsor to support any U.S. citizen children of the sponsored immigrant." Immigration & Naturalization Service, "Clarification of Service Policy Concerning I-864 Affidavit of Support," Memorandum from Michael D. Cronin, Acting Associate Commissioner Office of Programs, March 7, 2000.

and resources of any person who executed an affidavit of support pursuant to section 423 of PROWRA which is a legally binding affidavit." In fact, the statute does not use the word *all*, it merely indicates that the income and resources of the alien include "the income and resources of any person who executed an affidavit of support...on behalf of such alien." Thus, it is not statutorily mandated that *all* income and resources of the sponsor be deemed to the alien. It is possible, and reasonable, to include deductions from the sponsor's gross income for the sponsor's own support.

Deductions are essential to estimate the amount of support a sponsor could actually be required to provide to a sponsored immigrant. For example, monies owed for taxes or court-ordered child support is not available to support the immigrant. USDA should allow reasonable income deductions, as it does under the current rules, for amounts required by the sponsor for self-support and support of dependents. This will assist eligible immigrants to qualify for food stamps.

USDA has discretion to retain the current deeming rule that better reflects the amount of a sponsor's income that could lawfully be made available to the sponsored immigrant for support. USDA should implement a rule that recognizes both that the sponsor's needs to retain some income for support of self and dependents, and also that the amount of income deemed needs to fairly relate to the amount of income actually available for the sponsored immigrant's support.

The existing food stamp law provides guidance on how to determine the income of a sponsor for deeming purposes. Consistent with the current food stamp deeming rules, USDA should calculate the amount of a sponsor's income that must be deemed to the sponsored immigrant. Under this provision, the agency would deem to the immigrant the sponsor's total monthly incomewith the existing income exclusions *and also* with the following deductions:

- a deduction equal to 20 percent of the sponsor's earned income; and
- a deduction in an amount equal to the food stamp program's monthly gross income eligibility limit for a household equal in size to a household that consists of the

65 Fed. Reg. 10856, 10899-10890 (Feb. 29, 2000) (emphasis added).

8 U.S.C. § 1631(a)(1).

7 C.F.R. § 273.11(j).

Food Stamp Act, sec. 5(i) (7 U.S.C. § 2014(i)).

As defined in 7 C.F.R. § 273.9(b).

sponsor, the sponsor's spouse, and any dependents the sponsor claims for income tax purposes.

These are reasonable income deductions for amounts required by the sponsor for self-support and support of dependents and will facilitate eligible immigrants' access to food stamps.

3. Deeming of a Sponsor's Resources with No Deductions (Proposed § 273.4(c)(2)(iii))

The USDA also proposes to eliminate *all* sponsor resource deductions on the basis that the statute mandates it. As discussed above, the statute does not mandate that *all* resources be counted. Thus it is possible, and reasonable, to include resource deductions for the same reason it reasonable to include income deductions.

Current food stamp deeming provisions require agencies to count the total amount of a sponsor's resources (as determined under 7 C.F.R. § 273.8) minus \$1,500, which used to be the asset limit for non-elderly households. The proposed rule eliminates this reduction. This is unrealistic and creates an artificial barrier because the lack of proposed deductions fails to recognize that the sponsor needs some assets for his or her own household. The Department should continue to allow a resource reduction, and to make that deduction equal to the current asset limit for non-elderly households, which has now been raised to \$2,000.

4. Deeming When Two or More Immigrants Are Sponsored by the Same Person (Proposed § 273.4(c)(2)(iv))

The Department's proposal to require states to deem only a pro rata share of the sponsor's income and resources when two or more immigrants are sponsored by the same person is positive. It reflects the reality that the sponsor's income and resources must be shared by all immigrants for whom the sponsor has signed an Affidavit of Support. However, the proposed rule would add a harmful qualification, requiring that in order to be counted, other sponsored immigrants must also apply for or participate in the FSP.

The qualification to the rule defeats the rule's equitable purpose, since the sponsor's income must be shared among all sponsored immigrants regardless of their relationship

65 Fed. Reg. 10856, 10899-10890 (Feb. 29, 2000).

8 U.S.C. § 1631(a)(1).

to the FSP. To restore equity, the USDA should permit the sponsor's income and resources to be divided by the total number of immigrants that he or she has sponsored, regardless of whether or not those other sponsored immigrants apply for or participate in the Food Stamp Program.

5. Deeming When the Sponsor and Immigrant Live in Separate Households (Proposed § 273.4(c)(3))

Current rules provide that sponsor deeming does not apply to an immigrant who is participating in the Food Stamp Program as a member of his or her sponsor's household. The rule also provides that deeming does not apply to an immigrant whose sponsor is participating in the food stamp program separate and apart from the sponsored immigrant. The proposed rules retain the exemption for immigrants who are participating as a member of their sponsor's household but delete the exemption for immigrants whose sponsors are participating as part of a household separate from that of the sponsored immigrant. This is overly restrictive because sponsors who are also food stamp recipients are unlikely to have income that could lawfully be made available to the sponsored immigrant for support.

Low-income families often decide where extended family members will live based on considerations that include maximizing the economic resources of the entire extended family. USDA should not create disincentives for immigrant families in this regard. The Department should retain the exemption from deeming for sponsors who are participating in the food stamp program, whether they live with the sponsored immigrant or not. Likewise, in all such circumstances, sponsors should be exempt from liability for receipt of food stamps by sponsored immigrants.

Finally, the USDA proposes to eliminate references to deeming under the pre-PRWORA section of the Food Stamp Act. This is a positive change that merits support because it will help avoid unnecessary confusion in an already-complex area.

6. Treatment of Income and Resources of Ineligible Immigrants (Proposed § 273.11(c)(3)(ii)(B))

The proposed rule includes an important state option that allows states to *not count* the income of immigrants ineligible under PRWORA in determining the food stamp eligibility

7 C.F.R. § 273.11(j)(3)(i).

and benefits of U.S. citizens and eligible immigrants in the same household. This is a favorable income-counting rule because it maximizes the allotment of food stamps that can be received by immigrant households, who already face greatly restricted eligibility because of PRWORA. The proposal also has the advantage of enabling states to provide much more generous state-funded food stamp restorations than would otherwise be possible. By increasing the amount of federally-funded food stamps that an immigrant family receives, this policy reduces the gap a state-funded program must fill, which will help immigrant families that face hunger to receive allotments that more nearly approach the allotments which citizen families can receive.

While this is a favorable provision, the Department should make one revision in the way the proposed rule is written. The proposal provides that a state adopting the option not to count the income of an ineligible legal immigrant must ensure that the resulting benefit level for the eligible household members does not exceed the benefit the household would receive if the ineligible immigrant member were “still an *eligible alien*” (emphasis added). As written, the proposed rule could have the unintended effect of reducing or eliminating benefits for some citizen children and other eligible immigrants whom the rule is designed to benefit. USDA can avoid this unintended consequence by using the words “if they were a citizen,” instead of the words “if they were still an eligible alien.”

Indicating that eligible household members cannot receive a larger benefit level than the household would receive if the ineligible member were “an eligible alien” could require complex deeming calculations to determine the benefit level that cannot be exceeded. This would have two deleterious effects. First, if the state counts the income deemed from an ineligible immigrant's sponsor, the result will generally be that the eligible household members — who are primarily citizen children — will have their food stamp benefits *cut or eliminated* as a result of an option that was supposed to help them. Second, the complexity of the deeming procedures could reduce state interest in the otherwise-helpful option allowing states not to count the income of PRWORA-ineligible immigrants.

These results would be avoided if the food stamp benefit level for the eligible household members were to be capped at the level the household would receive if the ineligible immigrant members were *citizens*, rather than if they were *eligible aliens*. USDA is requested to make this change in the wording of an otherwise very helpful provision.

7. Termination of Deeming

Immigrant sponsor income deeming terminates for a sponsored immigrant who has

8 U.S.C. § 1183a.

forty qualifying quarters of credit or becomes a U.S. citizen. The regulations should provide reasonable procedures to establish immigrant sponsor income deeming has terminated due to a sponsored immigrant's naturalization or receipt of forty qualifying quarters.

B. IMMIGRATION STATUS, SOCIAL SECURITY NUMBER AND VERIFICATION ISSUES FOR IMMIGRANT FAMILIES

1. Removing Immigration Status, Social Security Number and Immigration Status Verification Barriers

Many U.S. citizens and immigrants who are eligible for food stamps live with parents or other household members who are ineligible due to their immigration status or because they lack social security numbers. As noted above, thousands of eligible citizen children living in immigrant households have dropped out of the food stamp program since enactment of the 1996 welfare law. A major barrier to their participation is created by food stamp agency requests for specific immigration status information or the social security numbers of ineligible family members who are not applying for food stamps.

Although agencies may ask food stamp applicants if they are eligible immigrants with social security numbers, it is unnecessary to ask non-applicant household members the same information. Doing so presents an unnecessary barrier to eligible immigrants and citizens who live with ineligible immigrants.

Non-applicant immigrants who are ineligible for food stamps due to their immigration status will not have immigration documents to establish their eligibility and will be unable to provide them. Likewise, non-applicant immigrants who lack social security numbers will not be able to provide them. More importantly, eligible immigrants fear that if their family members are required to provide sensitive information about their immigration status or lack of a social security number, the information will be provided to the Immigration and Naturalization Service. Thus, many eligible applicants decline to participate in the Food Stamp Program. This has devastating consequences for citizens and immigrants who need food stamps to alleviate hunger.

To avoid unnecessary barriers for eligible immigrants and citizens who live with ineligible immigrants, the regulations should permit households to designate which members of the household are applicants and which members of the household are non-applicants. Applicants may be requested to provide immigration status information

8 U.S.C. § 1183a.

Some eligible immigrants may not have social security numbers at the time they apply for food

and social security numbers to establish eligibility. However, the regulations should instruct that non-applicants should not be asked, either orally or in writing, about their specific immigration status. Specific information about an ineligible immigrant's status is irrelevant to the food stamp application process and requests for it create unnecessary barriers to applying for food stamps.

Further, although agencies may appropriately ask non-applicant household members for information about income to determine household eligibility, the regulations should prohibit requests to non-applicants for social security numbers. Alternatively, non-applicants should be requested to provide a social security number only if one is available. If the alternative is implemented, the regulation should instruct that no negative inference may be drawn about the immigration status of an individual who indicates that he or she does not have a social security number. Many immigrants who are lawfully present in the United States do not have social security numbers either because their immigration status does not permit them to work or there are processing delays in receiving the number.

Finally, the regulation should indicate that only applicants' immigration status will be verified. It will also reduce non-applicants' fears of having members of their household apply for food stamps.

Drafting the regulation in this manner would serve both the interests of the Food Stamp Program and mixed households. The Food Stamp Program would obtain all information necessary to administer the program and mixed households could be assured that unnecessary questions would not be asked of non-applicants about immigration status and social security numbers. This would alleviate fear in the immigrant community and lead to higher participation rates among desperately hungry U.S. citizen and eligible immigrant children who live with ineligible immigrants.

To the extent that these suggestions are accepted and incorporated into the final regulation, the following proposed amendments may be unnecessary or need to be modified to fit the context of the amended regulation. In any event, the amendments proposed below are intended to ensure that non-applicants are not asked unnecessary questions about social security numbers or immigration status and that verification of immigration status is limited to applicants.

stamps. For example, a newly arrived refugee may not immediately have a social security number. In such instances, provisions should be made in the regulations for an otherwise eligible immigrant to receive food stamps pending receipt of a social security number.

This is consistent with the 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, 62 Fed. Reg. 61,344, 61347 (Nov. 17, 1997).

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The proposed amendments are as follows:

Amend § 273.2(b)(2)(iii)(C), in part, to read:

Notification that the alien status of any ~~household member~~ *applicant* may be subject to verification by INS through the submission of information from the applicant to INS.

Amend § 273.2(b)(2)(iii)(D)(1), in part, to read:

The Food Stamp Act requires the collection of *applicants'* social security numbers (SSN) as a condition of food stamp eligibility and failure to provide a SSN may result in the *applicant* household member who fails to provide a SSN being ineligible to receive Food Stamps.

Amend § 273.2(b)(2)(iii)(D)(3), in part, to read:

A statement of how the social security number will be used and to whom it may be disclosed. The SSN will be used to check the identity of *applicant* household members, *and* to prevent duplicate participation.

Note, this subsection appears to be incorrectly numbered in the text of the proposed rule. Section 273.2(b)(2)(iii)(D)(3) appears twice.

Amend § 273.2(c)(1), in part, to read as follows:

An adult representative of each applicant household must certify in writing, under penalty of perjury that the information contained in the application is true and that ~~all applicant household members of the household~~ are citizens or are eligible aliens.

Amend Preamble to § 273.2(c)(1), at pg. 10863, col. 3, first full paragraph, following the first sentence, insert new text to read as follows:

This paragraph includes the requirement that an adult representative of each applicant household must certify in writing, under penalty of perjury, that the information contained in the application is true and that applicant household members are citizens or eligible aliens.

Amend § 273.2(f)(1)(iv), in part, to read:

The immigration status of *applicant* aliens must be verified. *If an applicant household member does not wish to have the INS contacted, the household shall be given the option of participating without that member or withdrawing its application.*

Amend Preamble to § 273.2(f)(1), at pg. 10867, col. 1, first full sentence, to read:

In the introductory paragraph (f)(1)(iv), we would provide that the immigration status of ~~all applicant~~ aliens and other factors relevant to the eligibility of individual *applicant* aliens must be verified prior to certification. *To ensure that any eligible household member is not deterred from participating in the Food Stamp Program, if any applicant household member does not wish to have the INS contacted, the household shall be given the option of participating in the*

Food Stamp Program without that member or withdrawing its application.

To the extent that similar provisions appear in the preamble or proposed rule that have not been mentioned here, they too should be amended consistent with the principle that verification of immigration status should be limited to applicants and that non-applicants should not be asked unnecessary questions about social security numbers or immigration status.

2. Verification of Identity (Proposed § 273.2(f)(1)(i))

Immigrants and naturalized citizens may have difficulty obtaining specific documents such as birth certificates to establish identity, but can provide alternative evidence. USDA should require states to accept any document that reasonably establishes identity, as is required by current rules but has been deleted from the proposed rules.

C. HOME VISITS (Proposed § 273.2(e))

It is requested that the "home visit" provisions of the proposed rule be amended. As written, they present an unnecessary barrier to receipt of food stamps by immigrant families.

Proposed rule 273.2(3)(1) would permit state agencies to conduct interviews of food stamp households during their certification period "at the food stamp office or another mutually convenient location of the State agency's choosing, including a household residence." This proposed change gives states authority to require households to be subject to home interviews in order to receive food stamps. For mixed households in which eligible immigrants or U.S. citizens live with ineligible immigrants, some of whom may be undocumented, home visits are particularly threatening. Further, many immigrants, particularly refugees and asylees, come from countries in which official visits to their homes constitute a hostile and threatening act. Out of fear, or to protect their privacy interests, many households forego food stamps rather than submit to home visits. This creates an unnecessary barrier to participation by U.S. citizens and immigrants who live in mixed households.

The integrity of the Food Stamp Program can be protected without home visits. Meetings may take place at food stamp offices or other convenient locations outside the home and any necessary information may be obtained at these meetings. Thus, home visits should be prohibited. Alternatively, the final rule should require two conditions be met before allowing home visits: 1) the household is unwilling to come to the food stamp office or other mutually convenient location; and 2) the household agrees to be interviewed in the home. Advance notice of home visits should be required and home visits should not occur if a household has submitted sufficient verification.

D. LINGUISTIC AND CULTURAL ACCESS ISSUES FOR IMMIGRANTS

Currently almost 14 percent of Americans speak a language other than English at home. Many recent arrivals such as immigrants from Southeast Asian countries live in linguistically isolated households. Limited-English proficient (LEP) immigrants face daunting and often insurmountable barriers to accessing quality social services. The anomaly of declining caseloads at a time of significant and persistent need underscores the importance of ensuring outreach to LEP populations.

The U.S. Supreme Court has found that under Title VI of the Civil Rights Act of 1964, recipients of federal financial assistance such as state food stamp agencies have an affirmative duty to provide LEP persons with a meaningful opportunity to participate in public programs. It is imperative that USDA clarify and emphasize state responsibilities under Title VI. USDA's use of thresholds in triggering minimum standards for written materials to be available in different languages when a language group in the recipient's service population is numerically or proportionately significant is commendable. However, experience has shown that even stronger standards are necessary to ensure participation by LEP individuals in the Food Stamp Program.

1. Applicability of Title VI to All Languages and All Individuals

The regulations should contain a clear statement that the protections and rights to linguistic and cultural access afforded under Title VI apply to all LEP individuals, regardless of the numbers of individuals from a given language group who live in a given service area. Also, access should be provided for all language groups, regardless of how obscure a language may be.

2. Nondiscrimination Compliance

Jane Perkins, Harry Simon, Francis Cheng, Kristi Olson, and Yolanda Vera, Ensuring Linguistic Access in Health Care Settings: Legal Rights and Responsibilities, National Health Law Program, January 1998.

Lau v. Nichols, 414 U.S. 563 (1974).

See *In re Department of Social Services*, OCR No. 08917007 at 3, n. 1 (Sept. 30, 1992) (noting that "a recipient who denies services to even one person due to his LEP status violates Title VI."), quoted in Jane Perkins et. al., see note 12, at page 28. See also United States Department of Agriculture, Food and Nutrition Service, Policy Memo No. 5-11 (December 1, 1978).

The regulations should explain that states will violate civil rights laws if they fail to provide linguistically appropriate and accessible services. With the proposed deletion of training requirements it is even more essential for USDA to provide information in the final rule on implementation of civil rights statutes, including examples of both violations and best practices. The rules should also require states to inform households that failure to provide linguistically and culturally appropriate notices and services is grounds for filing a grievance, appeal or lawsuit.

3. Minimum Standards and Procedures

It is requested that USDA implement procedures throughout Part 273 for providing linguistic and culturally competent access at all stages of service: from outreach to enrollment to delivery of services to grievances and appeals. The Department should strongly recommend these standards and procedures for any LEP individuals, and should require standards for written materials when states have numbers of LEP individuals that meet thresholds.

One important minimum standard is a prohibition on states from requiring, suggesting, or encouraging households to use family members or friends as interpreters. This practice should be used only as a last resort, and in all instances, USDA should prohibit the widespread practice of using minors as interpreters. In addition, there should also be explicit instructions to provide translated signage and written materials informing households of their right to receive bilingual or interpreter services.

E. IMMIGRATION STATUS ELIGIBILITY ISSUES

1. The Seven-Year Eligibility Limit for the Refugee Group (Proposed § 273.4)

The proposed rule recognizes that immigrants in certain statuses grouped with refugees (refugees, asylees, persons granted withholding of removal, Cuban and Haitian Entrants and Amerasians) are eligible for food stamps for seven years from the date the immigrant received the status. However, USDA should clarify two important points about their eligibility. First, they are eligible for seven years even if before the end of the seven years they adjust status to a category of legal permanent resident that is not eligible for food stamps. Second, reaching the seven-year limit is only a limit on eligibility for these immigrants if they are not otherwise eligible for food stamps. Some may change to an immigration status that does not have limits on the length of time that they may receive assistance, such as a lawful permanent resident credited with 40

See, e.g., HHS Office of Minority Health's "Draft Standards on Culturally and Linguistically Appropriate Health Care," 64 Fed. Reg. 70042-70044 (Dec. 15, 1999).

quarters of work.

Further, at least two years prior to the completion of seven years of eligibility, USDA should advise immigrants that they may lose eligibility at the end of seven years if they do not adjust their immigration status or have another status that makes them eligible. USDA should also encourage them to seek competent assistance to adjust their immigration status.

2. Definition of Non-Citizen National and Citizen (Proposed 7 C.F.R. § 273.4)

The proposed rule provides that a person who is a "U.S. alien national" is eligible for food stamps. The term, "U.S. alien national," is novel and does not appear to have legal meaning, but presumably refers to "non-citizen nationals," a common term with legal meaning. To reduce confusion, it is recommended that the term "non-citizen national" be used in place of the term "U.S. alien national."

The preamble to the proposed rule states that a reference to the definition of "citizen" contained in the Interim Guidance has been added to the rule. No such reference appears in the proposed rule. To avoid confusion, the food stamp rule should include the definition. Further, it is recommended that the actual definition be included in the text of the food stamp rule rather than merely providing a cross reference to the definition in the Interim Guidance. This would make the food stamp rule easier to use.

Finally, some children may automatically become citizens when their parent(s) naturalize. In such cases, there may be delays in receiving proof from the INS of such citizenship. The regulations should permit the child to receive food stamps upon a showing that the child meets the statutory requirement of citizenship pending receipt of proof from INS.

3. Definition of "Lawfully Residing" in the United States

Certain immigrants are eligible for food stamps if they are or were "lawfully residing" in

Immigration law defines "alien" as a person who is not a citizen or national of the U.S. 8 U.S.C. § 1101(a)(3). See *also* 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, 62 Fed. Reg. 61,344, 61,347 (November 17, 1997).

65 Fed. Reg. 10856, 10,873-10,874 (Feb. 29, 2000).

8 U.S.C. § 1432. See *also* 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, 62 Fed. Reg. 61,344, 61,364 (November 17, 1997).

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the United States. The proposed rule does not define "lawfully residing" in the United States. To avoid confusion, the term should be defined.

The U.S. Attorney General and the Social Security Administration have defined the term "lawfully residing" for Title II social security benefits. The definition used in the social security context is appropriate in the context of food stamps. The food stamp rule should expressly define the term "lawfully residing" and use the term as defined for Title II social security benefits purposes.

CONCLUSION

Since enactment of PRWORA in 1996, many immigrant households have foregone food stamps due to unnecessary barriers that stand between them and the receipt of food stamps. This has lead to unnecessary hunger in the community. To alleviate hunger, the USDA should implement food stamp rules that eliminate unnecessary barriers to receipt of food stamps by immigrants and their families.

Sincerely,

BRADEN CANCELLA
NATIONAL IMMIGRATION LAW CENTER

Definition of the Term Lawfully Present in the United States for Purposes of Applying for Title II Benefits Under Section 401(b)(2) for Public Law 104-193, 61 Fed. Reg. 47,039 (September 6, 1996); Program Operations manual System (POMS) SI 00502.142.

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PROPOSED FOOD STAMP RULES THREATEN CITIZEN CHILDREN AND ELIGIBLE LEGAL IMMIGRANTS

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Overview

On February 29, 2000, the U.S. Department of Agriculture's Food and Nutrition Service (FNS) published the most important set of proposed food stamp rules on immigrant issues in years (and probably in the food stamp program's history). The proposed rules contain one very positive provision that should help families with legal immigrants. Unfortunately, the rules also include numerous damaging provisions that could cause many thousands of legal immigrants and citizen children to lose food stamps. Overall, the proposed rules would be quite harmful to legal immigrants and citizen children of immigrant parents.

For example, the proposed rules would count the income of a sponsor of an immigrant who is ineligible for food stamps in determining the food stamp eligibility and benefit level of *citizens and eligible non-sponsored immigrants* who live with the sponsored immigrant. In the vast majority of such cases, counting the income of the sponsor of the ineligible immigrant as though it were part of the income of the other people in the dwelling unit would make the other household members ineligible for food stamps. The result would be the termination of food stamps for thousands of citizen children whose parents are sponsored immigrants.

This provision is not required by statute, and there is no evidence to suggest Congress intended it; to the contrary, the legislative history suggests Congress did *not* intend it. If this provision is included in the final rules, it will be tantamount to a new cut in the food stamp benefits of eligible legal immigrants and citizen children that USDA and the Clinton Administration will unnecessarily be imposing.

The proposed rules also include other troubling provisions related to deeming. One provision would substantially increase the amount of a sponsor's income that is deemed to a sponsored immigrant by eliminating existing regulatory provisions that adjust the amount of deemed income downward to take into account a sponsor's work expenses and the sponsor's obligation to support his or her own household. Another provision would increase the number of households subject to deeming by eliminating a current regulatory provision that exempts from deeming those households that contain immigrants whose sponsors are so poor they receive food stamps themselves as part of a separate food stamp household. USDA has discretion in these areas, but in each case, has proposed highly restrictive rules the welfare law does not require.

Many Immigrants Remain Eligible for Food Stamps

In spite of the 1996 welfare law's restrictions on immigrant eligibility for public benefits, the food stamp program continues to be an important part of the safety net for many legal immigrant families. Refugees, asylees, Cuban/Haitian entrants, Amerasians, and persons granted withholding of deportation are eligible for food stamps for their first seven years in the United States or their first seven years after having been granted that status, regardless of their date of entry. Qualified immigrants are eligible for food stamps without a seven-year time restriction if they are veterans or on active duty in the armed forces, or if they can claim 40 quarters of work, either through their own employment or through adding that of their parents or spouses. Qualified immigrants who, on August 22, 1996, were lawfully residing in the United States, remain eligible for food stamps if they:

- receive benefits or assistance for blindness or disability;
- were 65 years or older on August 22, 1996; or
- are now under 18 years of age.

Also eligible for food stamps are Native Americans with treaty rights to cross the U.S. borders with Canada and Mexico, and members of Hmong/Highland Lao tribes and their spouses, widows and dependent children.

The rules also include a number of other troubling provisions that would make it more difficult for eligible immigrants and citizen children to access food stamps. In particular, a number of changes related to verification of immigration status, income and other information could burden immigrant families and would likely lead to further declines in food stamp participation by eligible immigrant household members and citizen children.

This paper provides a summary of several of the provisions in the proposed rules that would significantly affect immigrants and their families. A companion paper by the Center on Budget and Policy Priorities, "*Analysis of Proposed Food Stamp Rules: Noncitizen Provisions*," analyzes these provisions in greater detail. The companion paper also analyzes several additional provisions of the proposed rules not summarized in this paper.

Provisions Related to Deeming and the Treatment of the Income of Ineligible Immigrants

The proposed rules include deeming provisions that would:

- result in the denial of food stamp benefits to thousands of citizen children by counting the income of the sponsor of an ineligible immigrant in determining the food stamp eligibility and benefit levels of citizens and *non-sponsored* immigrants who live with the sponsored immigrant;
- substantially increase the amount of a sponsor's income that is deemed to a sponsored immigrant by eliminating existing deductions that recognize a sponsor's work expenses and the sponsor's obligation to support his or her own household at a minimal level; and

- increase the number of households subject to deeming by deleting an existing exemption from deeming for immigrants whose sponsors are so poor they receive food stamps themselves as part of a separate food stamp household.

USDA has discretion on each of these issues but has proposed highly restrictive rules the welfare law does not require that would result in the denial of food stamps to otherwise-eligible citizens and legal immigrants.

Consider, for example, the proposal requiring that the income of sponsors of ineligible immigrants be counted. Under current USDA guidance, states have discretion on this issue and do *not* have to count the income of sponsors of ineligible immigrants in determining the benefits of other household members.

This rule would apply to any food stamp household that contains a sponsored immigrant who filed an application for an immigrant visa or adjustment of status on or after December 19, 1997. These sponsored immigrants are immigrants who have what is commonly known as a "Form I-864" Affidavit of Support. Counting the sponsor's income in these cases has no effect on whether the sponsored immigrant gets food stamps; virtually all immigrants with these affidavits of support entered the United States after August 22, 1996 and are ineligible for food stamps anyway. What this rule would do would be to make the *non-sponsored* household members — including citizen children — ineligible for food stamps for a number of years or to deter these eligible household members from applying for food stamps in the first place. Even in cases where a sponsor's income would not make such household members ineligible for food stamps, the reporting and paperwork requirements associated with deeming would make many of these household members unlikely to seek food stamps.¹

This proposal to attribute a sponsor's income and resources to citizen children and non-sponsored immigrants is not required by federal law. The welfare law is silent on whether a sponsored immigrant made ineligible by the law must be treated as a household member and

¹ It may be argued that under these rules, the proposal to attribute the income of an ineligible immigrant's sponsor to citizen children and non-sponsored immigrants would be a state option. This could be so because another provision of the proposed rules would give states the option not to count the income of an immigrant made ineligible by the welfare law in determining the eligibility and benefit levels of U.S. citizens and eligible immigrants residing with that immigrant. Although the proposed rules are not explicit on this point, it seems reasonable to assume that in a state that elected the option not to count the income of ineligible immigrants, the income of an ineligible immigrant's sponsor would not be counted either.

Even if this is the case, however, it does not solve the serious problem that the proposal to deem the income of an ineligible immigrant's sponsor would create. The majority of states are unlikely to take the option not to count the income of ineligible immigrants who reside with citizen children and eligible immigrants. This option has been available to states (through USDA guidance) since April 1998. Only five states have implemented it. (Several additional states are actively considering it.) Furthermore, a state option to attribute the income of a sponsor of an ineligible immigrant to non-sponsored household members is inappropriate in any case. It is tantamount to giving states the option to deny food stamp benefits to otherwise eligible citizen children, something Congress clearly did not intend.

whether the income and resources of the sponsor of an immigrant who is ineligible for food stamps must be counted in determining the eligibility of citizens and eligible non-sponsored immigrants who reside with the sponsored immigrant. USDA has discretion to not to count the sponsor's income and resources — so that citizen children residing in the household may receive food stamps. Indeed, the legislative history supports such a reading of the welfare law's deeming requirement. The conference report explains that a sponsor's income is to be taken into account "in determining the sponsored *individual's* neediness" [emphasis added].

Making the Current Deeming Rules More Onerous in Ways the Law Does Not Require

Another disturbing provision of the proposed regulations would deem *all* of a sponsor's gross income to a sponsored immigrant, without adjusting the income downward to reflect the amount of support the sponsor might actually be required to provide to such an immigrant. Under the current food stamp deeming rules, 20 percent of a sponsor's earned income is subtracted to reflect the sponsor's work expenses and taxes. An amount equal to the food stamp program's monthly gross income limit for a household of the same size as the sponsor's household also is deducted; this is done to reflect the fact that the sponsor needs to use some of his or her income to cover the basic living expenses of his or her own household. The proposed rule would drop both of these deductions and deem 100 percent of the sponsor's gross income to the sponsored immigrant.

USDA has discretion to adopt a deeming rule that better reflects the amount of a sponsor's income that could actually be made available to the sponsored immigrant for support. A range of options can be considered. The best option would be to maintain the current food stamp deeming rules in this area.

On yet another matter related to deeming, current rules provide that sponsor deeming *does not apply* to an immigrant whose sponsor is participating in the food stamp program separate and apart from the sponsored immigrant. The proposed rules *delete* this exemption from deeming. The final rules ought to retain it. Sponsors who are participating in the food stamp program are unlikely to have much income that could be made available to sponsored immigrants for support.

Treatment of Income and Resources of Aliens Made Ineligible Under the Welfare Law

On the positive side, the proposed rule includes an important state option to allow states not to count the income of immigrants made ineligible by the welfare law in determining the eligibility and benefit levels of U.S. citizens and eligible immigrants who reside with those immigrants. In states that elect this option — which current USDA guidance allows and which a modest number of states, including California, have adopted — citizen children who reside with ineligible legal immigrants would receive larger benefits. This option also would enable states to provide more generous state-funded food stamp restorations than would be likely in the rule's absence. By increasing the amount of federally-funded food stamps that eligible children in an immigrant family receive, this policy reduces the gap a state-funded program must fill and enables the state to cover a broader range of legal immigrants.

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This is an important provision that deserves support. But it also needs revision. As written in the proposed rules, this provision could have the unintended effect of reducing or eliminating benefits for some citizen children and other eligible immigrants.

The proposed rule provides that a state adopting the option not to count the income of ineligible legal immigrants must ensure that the resulting benefit level for the eligible household members does not exceed the benefit the household would receive if the ineligible immigrant members were eligible immigrants. The intent of this proposal rules is reasonable. But if the ineligible immigrant household member is a sponsored immigrant with a Form I-864 Affidavit of Support, stipulating that the eligible household members cannot receive a larger benefit level than the household would receive if the ineligible member were an eligible immigrant would appear to mean the state would have to go through complex deeming procedures to determine the benefit level that cannot be exceeded.

This would have two deleterious consequences. First, the complexity of the deeming procedures could significantly reduce state interest in this otherwise-helpful option. Second, if the state counts the income deemed from an ineligible immigrant's sponsor, the result will generally be that the eligible household members — who are primarily citizen children — will have their food stamp benefits *cut or eliminated as a result of an option that was supposed to help them*. This problem can readily be solved if the food stamp benefit level for the eligible household members is capped at the level the household would be receiving if the ineligible immigrant members were *citizens*, rather than if they were *eligible aliens*. The sole difference here is that by using an "if they were citizens" test, the perverse and unintended application of deeming in these circumstances is avoided.

Verification Issues that May Burden Participation by Immigrant Families

The verification process raises special concerns for immigrant families. Documents required to establish that an applicant is a citizen or has an immigration status that makes the immigrant eligible for food stamps sometimes can be difficult or take a number of weeks to obtain. In addition, routine requests from food stamp offices for immigration status information or for the social security numbers of immigrant household members who are *ineligible* for food stamps — and are not applying for food stamps — may raise concerns about whether the information will be shared with the INS and deter participation by citizens and other eligible household members. Immigrants also may have language barriers that make it difficult to understand or comply quickly with verification requirements.

For these reasons, the verification issues the proposed rules present deserve careful consideration and should be crafted in a manner that does not unnecessarily impede participation by immigrant families. Unfortunately, the proposed rules fail this test. They weaken or repeal a number of longstanding provisions aimed at assisting and protecting immigrant and other families, provisions that have been in the food stamp rules for more than 20 years and were examined and retained by the Reagan and Bush administrations. The likely result would be to

intensify "chill" effects that discourage some eligible immigrants and citizen children from applying for food stamps and to make the program less accessible to such households

- **Verification of Identity:** The proposed rules delete language in the current rules that state that in verifying identity: "[a]ny 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." This language should be retained to preclude burdensome requests for particular documents, such as birth certificates, that immigrants and naturalized citizens may have difficulty obtaining. This language was added to the rules in the late 1970s because a major participation barrier in a number of areas at that time was a requirement for a specific form of documentation of identity, often a birth certificate. (USDA may contend it is not changing its policy here, and that a state still cannot demand a specific type of document such as a birth certificate. But if this clear and explicit sentence is removed from the rules, the practices of the 1970s are likely to return in some areas.)
- **Verification of Alien Status:** This part of the proposed rules states that "[t]he immigration status of aliens must be verified." To prevent agencies from interpreting this provision as requiring the verification of the immigration status of *ineligible* aliens, which would have a chilling effect on the participation of eligible household members and especially citizen children, this sentence should be revised to read: "the immigration status of *eligible* aliens must be verified."

The proposed rule also deletes a sentence in the current rules that provide: "[i]f the alien does not wish to contact the INS [for purposes of verifying immigration status], the household should be given the option of withdrawing its application or participating without that member." This provision needs to be retained.

- **Allowing Sufficient Time to Gather Required Documents:** Current food stamp rules provide that in cases where verification is incomplete, the agency must provide the household with a statement of what verification is still required and allow the household at least 10 additional days to provide the "particular verification that was missing." The proposed rules weaken this protection. They eliminate the reference to the "particular verification that was missing" and can be read to allow only 10 days for *all* verification to be provided, even if some *additional* verification is requested by the state agency during the 10-day period. The final rules should maintain the current practice, under which the household must receive at least ten days to provide any specific piece of verification (and longer if necessary if the household is attempting to cooperate but needs more time to come up with the documents).

In addition, current rules prohibit denying a household's application within the 30 days after a household has applied if the application cannot be processed because some needed information is missing and the household is trying to secure the information. The proposed rules eliminate this protection. The current regulation was written to curb what

had been a fairly widespread practice of automatically denying applicants after ten days regardless of whether they were trying to obtain required verification.

Suppose an immigrant provides documents to verify immigration status on the seventh day of the initial 10 day verification period and the agency responds by requesting additional documents it had not specifically identified before. This is not an uncommon occurrence. Under the proposed rule, the agency could take the position that the additional documents must be provided within the remaining three days of the 10 day period, rather than providing an additional 10 days as is required under the current rule. If the household is unable to provide the additional documents in three days, the state could deny the application, a consequence not allowed under the current rules. The result could be more denials of immigrant households that apply for food stamps.

Related problems could occur under the proposed rule when the food stamp office requests additional verification and the applicant household is attempting to secure the material but has not been able to do so within 30 days. Under current rules, if the household provides the needed information by the 60th day after applying, the application is processed. By contrast, under the proposed rules, food stamp offices could deny all such applications on the 30th day and make households providing the necessary information on the 35th or 40th day submit new applications and start the application process all over again, even though all of the information needed to determine their eligibility has now been provided. This may cause some households to give up, especially immigrant working families that have to take time off from work to go to the food stamp office.

These proposed changes in the rules pose particular problems for immigrants, who often are faced with highly technical verification requirements related to immigration status and may need more time to get certain documents from government agencies or from overseas. Immigrants also may have language barriers that make it more difficult for them to understand or quickly provide exactly what the food stamp agency is requesting.

Requests for Social Security Numbers and Immigration Status

A substantial number of children eligible for food stamps live with parents or other household members who are undocumented or in an immigration status that renders them ineligible for some means-tested programs. Requests for immigration status information or the Social Security numbers of these ineligible family members during the food stamp application process can deter citizen children and eligible legal immigrant members of some mixed-status households from participating in the food stamp program.

In the near future, HHS and USDA are expected to issue joint guidance relating to state requests for SSNs and immigration status information on Medicaid, CHIP, food stamps, and TANF application forms. It is important that the final food stamp rules be consistent with this forthcoming joint agency guidance, which is expected to be excellent. The preferred approach to food stamp agency requests for SSNs and information about immigration status should be

modeled on the Medicaid application process. In Medicaid, states must allow applicants to designate specific family members as "non-applicants" before applicants are asked to provide immigration status information or SSNs for family members applying for Medicaid. At a minimum, the final food stamp rules should prohibit states from asking non-applicants to provide immigration status information and give states the option not to ask non-applicants to provide social security numbers.

Home Visits

Home visits, especially unannounced home visits, are likely to have a chilling effect on the participation of mixed immigrant-status households in the food stamp program. Current food stamp rules generally do not allow home visits unless documentary evidence is unavailable and the home visit is scheduled in advance with the household. Several states, however, conduct unannounced home visits on a widespread basis and claim that current protections in the food stamp rules do not apply because the visits are for "fraud prevention" purposes.

In some states these practices are used in cases where the state has no basis to believe a particular family has committed fraud. These states target home visits on households that fall in a category of households that has a significantly higher-than-average error rate and label such visits as "fraud prevention." Such practices reflect a rather tortured interpretation of current food stamp rules, but USDA's Food and Nutrition Service allows them.

These practices are likely to affect a disproportionate percentage of mixed-immigrant-status households because of the complex nature of the food stamp rules that now relate to immigrants' eligibility for food stamps. The welfare law and other recent legislation make some members of immigrant households eligible for food stamps and other members ineligible. The complexities of determining immigrant eligibility and dealing with the treatment of income and expenses of ineligible immigrants in the household make these households more error-prone than other food stamp households. Prior to the welfare law, immigrant households did *not* have an above-average food stamp error rate. Now, the error rate for households with immigrant members is well above average, a direct result of the added complexity the federal government has imposed in this part of the program. As a result, these households can be classified as error-prone and disproportionately subjected to unannounced home visits.

The final rules should reduce the chilling effect that unannounced home visits have on immigrants' participation in the food stamp program by applying the protections in the current rules on the use of home visits for verification purposes to all home visits conducted by food stamp agency personnel. Unannounced home visits should be restricted to cases where law enforcement officials have a specific basis for suspecting the household has committed fraud. They should not be used by food stamp offices when a household falls into a category that has an above-average error rate.