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(1) The State agency shall determine an amount to be withheld each week by considering as many of the factors listed in paragraph (e) of this section as it has knowledge of and shall recommend such amount to the court. The State agency shall notify the court of any mandatory deductions from an individual's UC benefits of which it has knowledge.

(2) The State agency shall assure that any individual against whom a court-ordered deduction is sought is notified of:

(i) The total amount to be deducted from UC benefits otherwise due;

(ii) The amount of UC benefits to be deducted each week; and

(iii) The number of weeks the deduction will be made.

(3) The State agency shall provide the UC agency the information specified in paragraph (f)(1) of this section and a copy of the court order or a summary as the UC agency may request.

(g) *Agreement with UC agencies.* State agencies using the procedures specified in this section shall execute written agreements with UC agencies, including UC agencies in other States when circumstances and experience indicate that would be useful. The agreements shall include:

(1) The requirements specified in this section which affect both agencies, including the identifying information the State agency will provide, the frequency of and the procedures for exchanging information;

(2) The particular costs, both initial and ongoing, which the State agency shall reimburse the UC agency. Such costs shall be limited to those attributable to the repayment of claims for intentional Program violations for which the State agency does not otherwise reimburse the UC agency; and

(3) The frequency of transmittals of deductions from UC benefits to the State agency and of reports of amounts deducted for each individual and the total amount transmitted.

[Amdt. 320, 55 FR 6239, Feb. 22, 1990]

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Sec.

273.1 Household concept.
273.2 Application processing.
273.3 Residency.
273.4 Citizenship and alien status.
273.5 Students.
273.6 Social security numbers.
273.7 Work requirements.
273.8 Resource eligibility standards.
273.9 Income and deductions.
273.10 Determining household eligibility and benefit levels.
273.11 Action on households with special circumstances.
273.12 Reporting changes.
273.13 Notice of adverse action.
273.14 Recertification.
273.15 Fair hearings.
273.16 Disqualification for intentional Program violation.
273.17 Restoration of lost benefits.
273.18 Claims against households.
273.19 [Reserved]
273.20 SSI cash-out.
273.21 Monthly Reporting and Retrospective Budgeting (MRRB).
273.22 Optional workfare program.
273.23 Simplified application and standardized benefit projects.

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EDITORIAL NOTE: OMB control numbers relating to this part 273 are contained in § 271.8.

§ 273.1 Household concept.

(a) *Household definition*—(1) *General definition.* A household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in paragraph (e) of this section), are not residents of a commercial boarding house, or are not boarders (except as otherwise specified in paragraph (c) of this section):

(i) An individual living alone;

(ii) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others;

(iii) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(2) *Special definition:* (i) The following individuals living with others or groups of individuals living together *shall be* considered as customarily purchasing food and preparing meals together, even if they do not do so:

(A) A spouse as defined in § 271.2 of a member of the household;

(B) A child under 22 years of age who is living with his or her natural, adoptive, or stepparents, unless the child is

also living with his or her own child(ren) or spouse.

(C) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child is considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, except that a child who is living with his or her own child(ren) or spouse is not considered to be under parental control.

(ii) Although a group of individuals living together and purchasing and preparing meals together constitutes a single household under the provisions of paragraph (a)(1)(iii) of this section, an otherwise eligible member of such a household who is 60 years of age or older and who is unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act or suffers from a nondisease-related, severe, permanent disability may be considered, together with any of the others who is the spouse of the elderly and disabled individual, an individual household provided that the income (all income under § 273.9(b)) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed 165% of the poverty line.

(b) *Nonhousehold members.* (1) For the purposes of defining a household under the provisions of paragraph (a)(1) of this section, the following individuals shall not be included as a member of the household, unless specifically included as a household member under the provisions of paragraph (a)(2) of this section. If not included as a member of the household under the provisions of paragraph (a)(2) of this section, such individuals shall not be included as a member of the household for the purpose of determining household size, eligibility, or benefit level. The income and resources of such individuals shall be handled in accordance with the provisions of § 273.11(d). The following individuals (if otherwise eligible) may participate as separate households:

(i) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(ii) *Live-in-attendants.* Individuals who reside with a household to provide medical, housekeeping, child care or similar personal services.

(iii) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(2) Some household members are ineligible to receive Program benefits under the provisions of the Food Stamp Act (such as SSI recipients in cash-out States, certain aliens, and certain students). Others may become ineligible for such reasons as being disqualified for committing an intentional Program violation or refusing to comply with a regulatory requirement. These individuals shall be included as a member of the household for the purpose of defining a household under the provisions of paragraphs (a)(1) and (a)(2) of this section. However, such individuals *shall not* be included as eligible members of the household when determining the household's size for the purpose of comparing the household's monthly income with the income eligibility standard or assigning a benefit level by household size. The income and resources of such individuals shall be handled in accordance with the provisions of § 273.11 (c) or (d), as appropriate. These individuals are not eligible to participate as separate households. Ineligible individuals include the following:

(i) *Ineligible students.* Individuals who do not meet the eligible student requirements of § 273.5.

(ii) *Ineligible aliens.* Individuals who do not meet the citizenship or eligible alien status requirements of § 273.4(a) or the eligible sponsored alien requirements of § 273.11(j).

(iii) *SSI recipients in ''cash-out'' States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health and Human Services to have specifically included the value of the

coupon allotments in its State supplemental payments.

(iv) *Intentional Program violation.* Individuals disqualified for intentional Program violation, as set forth in § 273.16.

(v) *SSN disqualified.* Individuals disqualified for failure to provide an SSN, as set forth in § 273.6. A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

(vi) *Workfare sanctioned.* Individuals against whom a sanction was imposed while they were participating in a household disqualified for failure to comply with workfare requirements set forth in § 273.22.

(vii) Persons disqualified for noncompliance with the work requirements of § 273.7.

(c) *Boarders.* (1) Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals (excluding residents of a commercial boarding house). Boarders are ineligible to participate in the Program independent of the household providing the board. They may participate as members of the household providing the boarder services to them, at such household's request. In no event shall boarder status be granted to those individuals or groups of individuals described in paragraph (a)(2) of this section which includes children or siblings residing with elderly or disabled parents or siblings.

(2) The household within which a boarder resides (including the household of the proprietor of a boarding house) may participate in the program if the household meets all the eligibility requirements for program participation.

(3) To determine if an individual is paying reasonable compensation for meals and lodging in making a determination of boarder status, only the amount paid for meals shall be used, provided that the amount paid for meals is distinguishable from the amount paid for lodging. A reasonable monthly payment shall be either of the following:

(i) Boarders whose board arrangement is for more than two meals a day shall pay an amount which equals or exceeds the maximum food stamp allotment for the appropriate size of the boarder household; or

(ii) Boarders whose board arrangement is for two meals or less per day shall pay an amount which equals or exceeds two-thirds of the maximum food stamp allotment for the appropriate size of the boarder household.

(4) An individual furnished both meals and lodging by a household but paying compensation of less than a reasonable amount to the household for such services shall be considered a member of the household providing the services.

(5) None of the income or resources of individuals determined to be boarders and who are not members of the household providing the boarder services (as prescribed in paragraph (c)(3) of this section) shall be considered available to such household. However, the amount of the payment that a boarder gives to a household shall be treated as self-employment income to the household. The procedures for handling self-employment income from boarders (other than such income received by a household that owns and operates a commercial boarding house) are set forth in § 273.11(b). The procedures for handling income from boarders by a household that owns and operates a commercial boarding household are set forth in § 273.11(a). For Program purposes, a commercial boarding house is defined as an establishment licensed as an enterprise which offers meals and lodging for compensation. In project areas without licensing requirements, a commercial boarding house shall be defined as a commercial establishment which offers meals and lodging for compensation with the intent of making a profit. The number of boarders residing in a boarding house shall not be used to determine if a boarding house is a commercial enterprise.

(6) Notwithstanding the provisions of paragraphs (c)(1), (c)(2), and (c)(4) of this section, foster care individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program, shall be considered boarders. The Federal, State, or local governmental, or court ordered, foster

care payments received by the household for such foster care boarder shall not be considered as available income to the household and such payment is exempt from the computation of net self-employment income from boarders under the provisions of § 273.11(b). Foster care boarders may participate in the Program as members of the household providing the boarder services to them, at such household's request. If the household chooses this option, foster care payments received by the household shall be considered unearned income to the household and counted in their entirety in determining the household's income eligibility and benefit level. The provisions of this paragraph (c)(6) do not apply to individuals qualified to participate in the Program under paragraph (e) of this section.

(d) *Head of household.* (1) A State agency shall not use the head of household designation to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits. When designating the head of household, the State agency shall allow the household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult household members agree to the selection. The State agency shall permit such households to select their head at each certification action or whenever there is a change in household composition. The State agency shall provide written notice to all households at the time of application and as otherwise appropriate that specifies the household's right to select its head of household in accordance with this paragraph. The written notice shall identify which households have the option to select their head of household, the circumstances under which a household may change its designation of head of household, and how such changes must be reported to the State agency. If all adult household members do not agree to the selection or decline to select an adult parent as the head of household, the State agency may designate the head of household or permit the household to make another selection. In no event shall the household's failure to select an adult parent of children or an adult who has parental control over children as the head of household delay the certification or result in the denial of benefits of an otherwise eligible household. For households that do not consist of adult parents and children or adults who have parental control of children living in the household, the State agency shall designate the head of household or permit the household to do so.

(2) For purposes of failure to comply with § 273.7 and § 273.22 (to the extent that workfare programs operated under this paragraph are included as components of State agency E&T programs), the head of household shall be the principal wage earner unless the household has selected an adult parent of children as specified in § 273.1(d)(1). The principal wage earner shall be the household member (including excluded members) who is the greatest source of earned income in the two months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in any work requirement under title IV of the Social Security Act, or in receipt of unemployment compensation (or has registered for work as part of the application for or receipt of unemployment compensation), or is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household unless the person is an adult parent of children as specified in § 273.1(d)(1) and the household elects to designate the adult parent as its head of household. If there is no principal source of earned income in the household, the household member, documented in the casefile as the head

of the household at the time of the violation, shall be considered the head of household. The designation of head of household through the circumstances of this paragraph shall take precedence over a previous designation of head of household at least until the period of ineligibility is ended.

(e) *Residents of institutions.* (1) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50% of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the program with the following exceptions:

(i) Residents of federally subsidized housing for the elderly built under section 202 of the Housing Act of 1959.

(ii) Narcotic addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, reside at a facility or treatment center, and their children who live with them.

(iii) Disabled or blind individuals (as defined in paragraphs (2) through (11) of the definition of ''Elderly or disabled member,'' contained in § 271.2) who are residents of group living arrangements (as defined in § 271.2).

(iv) Women or women with their children temporarily residing in a shelter for battered women and children as defined in § 271.2. Such persons temporarily residing in shelters for battered women and children shall be considered individual household units for the purposes of applying for and participating in the Program.

(v) Residents of public or private nonprofit shelters for homeless persons.

(2) Residents of public institutions who apply for SSI prior to their release from an institution under the Social Security Administration's Prerelease Program for the Institutionalized (42 U.S.C. 1383 (j)) shall be permitted to apply for food stamps at the same time they apply for SSI. These prerelease applicants shall be processed in accordance with the provisions in § 273.2(c), (g), (i), (j), and (k), § 273.10(a) and § 273.11(i), as appropriate.

(f) *Authorized representatives.* The head of household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in making application for the Program, in obtaining benefits, and/or in using benefits at authorized retail food firms and meal services. Rules pertaining to the use of authorized representatives to obtain household benefits or to use household benefits are in § 274.5. Rules pertaining to designating authorized representatives to apply for the Program are specified in this section.

(1) *Making application for the program.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. In conjunction with these provisions, another household member, or the household's authorized representative, may complete work registration forms for those household members required to register for work. The State agency shall inform the household that the household will be held liable for any over issuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e) and § 273.16(a). Adults who are non-household members may be designated as authorized representatives for certification purposes only under the following conditions:

(i) The authorized representative has been designated in writing by the head of the household, or the spouse, or another responsible member of the household; and

(ii) The authorized representative is an adult who is sufficiently aware of relevant household circumstances.

(2) *Drug addict/alcoholic treatment centers and group homes as authorized representatives.* Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program (as defined in § 271.2) on a resident basis and their children who live with them and disabled or blind residents of group living arrangements (as defined in § 271.2) who receive benefits under title II or title XVI of the Social Security

Act may elect to participate in the Food Stamp Program.

(i) The residents of drug or alcoholic treatment centers shall apply and be certified for program participation through the use of an authorized representative who shall be an employee of and designated by the publicly operated community mental health center or the private nonprofit organization or institution that is administering the treatment and rehabilitation program.

(ii) Residents of group living arrangements shall either apply and be certified through use of an authorized representative employed and designated by the group living arrangement or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement shall determine if any resident may apply for food stamps on his/her own behalf; the determination should be based on the resident's physical and mental ability to handle his/her own affairs. The group living arrangement is encouraged to consult with any other agencies of the State providing other services to individual residents prior to a determination. All of the residents of the group living arrangement do not have to be certified either through an authorized representative or individually in order for one or the other method to be used. Applications shall be accepted for any individual applying as a one-person household or for any grouping of residents applying as a household as defined in §273.1. If the residents are certified on their own behalf, the coupon allotment may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and/or to purchase meals prepared and served by the group living arrangement. In any case, the group living arrangement is responsible for complying with the requirements set forth in §273.11(f). If the group living arrangement has its status as an authorized representative suspended by FCS (as discussed in §273.11(f)(6)), residents applying on their own behalf shall still be able to participate if otherwise eligible.

(3) In the event the only adult living with a household is classified as a nonhousehold member as defined in paragraph (b) of this section, that individual may be the authorized representative for the minor household members.

(4) The following restrictions apply to authorized representatives: (i) State agency employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons 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.

(ii) Individuals disqualified for an intentional Program violation shall not act as authorized representatives during the period of disqualification, unless the individual disqualified is the only adult member of the household able to act on its behalf and the State agency has determined that no one else is available to serve as an authorized representative. The State agency shall separately determine whether these individuals are needed to apply on behalf of the household, to obtain coupons, and to use the coupons for food for the household. For example, the household may have an authorized representative to obtain its coupons each month, but not be able to find anyone to purchase food regularly with the coupons. If the State agency also is unable to find anyone to serve as an authorized representative to purchase food regularly with the coupons, the disqualified member shall be allowed to do so.

(iii) The State agency shall insure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. In the event employers, such as those that employ migrant or seasonal farm-workers, are designated as authorized representatives or that a single authorized representative has access to a large number of ATP's or coupons, the State

agency should exercise caution to assure that: The household has freely requested the assistance of the authorized representative; the household's circumstances are correctly represented and the household is receiving the correct amount of benefits; and that the authorized representative is properly using the coupons. State agencies which have obtained evidence that an authorized representative has misrepresented a household's circumstances and has knowingly provided false information pertaining to the household, or has made improper use of coupons, may disqualify that authorized representative from participating as an authorized representative in the Food Stamp Program for up to one year. The State agency shall send written notification to the affected household(s) and the authorized representative thirty days prior to the date of disqualification. The notification shall include: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the office; and, if possible, the name of the person to contact for additional information. 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, may not act as authorized representatives for homeless food stamp recipients.

(g) *Strikers.* (1) Households with striking members shall be ineligible to participate in the Food Stamp Program unless the household was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. However, such a household shall not receive an increased allotment as the result of a decrease in the income of the striking member(s) of the household.

(2) For food stamp purposes, a striker shall be anyone involved in a strike or concerted stoppage of work by emloyees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees. Any employee affected by a lockout, however, shall not be deemed to be a striker. Further, an individual who goes on strike who is exempt from work registration, in accordance with § 273.7(b), the day prior to the strike, other than those exempt solely on the grounds that they are employed, shall not be deemed to be a striker. Examples of non-strikers who are eligible for participation in the program include but are not limited to:

(i) Employees whose workplace is closed by an employer in order to resist demands of employees (e.g., a lockout);

(ii) Employees unable to work as a result of striking employees (e.g., truckdrivers who are not working because striking newspaper pressmen prevent newspapers from being printed); and,

(iii) Employees who are not part of the bargaining unit on strike who do not want to cross a picket line due to fear of personal injury or death.

(3) Pre-strike eligibility shall be determined by considering the day prior to the strike as the day of application and assuming the strike did not occur.

(4) Eligibility at time of application shall be determined by comparing the striking member's income before the strike (as calculated for paragraph (g)(3) of this section) to the striker's current income and adding the higher of the two to the current income of nonstriking members during the month of application. To determine benefits (and eligibility for households subject to the net income eligibility standard), deduction shall be calculated for the month of application as for any other household. Whether the striker's pre-strike earnings are used or his current income is used, the earnings deduction shall be allowed if appropriate.

(5) Strikers whose households are eligible to participate under the criteria in § 273.1(g) shall be subject to the work registration requirements under § 273.7 unless exempt under § 273.7(b) the day of application.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.2 Application processing.

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

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

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

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

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

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

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

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

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

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

(3) *Deviations.* All State agencies shall use an application form designed by FCS. FCS may approve a deviation (design/contents) from that form to accommodate the use of a multi-program application form, the requirements of a computer system (including the use of on-line applications), or other exigencies for which the State agency can submit adequate justification, provided the form is brief, understandable to applicants, easy to use, and, for multi-program applications, clear enough to afford applicants the option of answering only those questions relevant to the program or programs for which they are applying. State agencies may request assistance from FCS in the development of a brief, simply-written and readable application, including application forms which cover the Food Stamp Program and the Aid to Families with Dependent Children Program or the Medicaid Program.

(c) *Filing an application*—(1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized

representative or by mail. The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with § 273.1(e)(2). Residents of public institutions who apply for foods stamps prior to their release from the institution shall be certified in accordance with § 273.2(g)(1) or § 273.2(i)(3)(i), as appropriate. Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative. State agencies shall document the date the application was filed by recording on the application the date it was received by the food stamp office. When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by the State agency on the food stamp application is the date of release of the applicant from the institution.

(2) *Contacting the food stamp office.* (i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

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

(iii) In State agencies that elect to have Statewide residency, as provided in § 273.3, the application processing timeframes begin when the application is filed in any food stamp office in the State.

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form.

(4) *Notice of right to file.* The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing on the application form.

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the

household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter. At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

(6) *Withdrawing application.* The 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 household shall be advised of its right to reapply at any time subsequent to a withdrawal.

(d) *Household cooperation.* (1) To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied 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 actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes and applications for recertification. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates with the State agency. The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

(2) *Cooperation with QC Reviewer.* In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.3(c)(5) or § 275.12(g)(1)(ii), the household may reapply, but shall not be determined eligible until it cooperates with the quality control reviewer. If a household terminated for refusal to cooperate with a State quality control reviewer reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with § 273.2(f)(1)(ix). 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 shall not 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 § 273.2(f)(1)(ix).

(e) *Interviews.* (1) All applicant households, including those submitting applications by mail, shall have face-to-face interviews in a food stamp office or other certification site with a qualified eligibility worker prior to initial certification and all recertifications. 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. Households shall be advised of their rights and responsibilities during the interview, including

the appropriate application processing standard and the households' responsibility to report changes. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(2) The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because they are elderly or disabled (as defined in § 271.2). The office interview shall also be waived if requested by any household which is unable to appoint an authorized representative and lives in a location which is not served by a certification office. The State agency shall waive the office interview on a case-by-case basis for any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because of transportation difficulties or similar hardships which the State agency determines warrants a waiver of the office interview. These hardship conditions include, but are not limited to: Illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. The State agency shall determine if the transportation difficulty or hardship reported by a household warrants a waiver of the office interview and shall document in the case file why a request for a waiver was granted or denied.

(i) The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. Home visits shall be used only if the time of the visit is scheduled in advance with the household.

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

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

(3) The State agency shall schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. If a household fails to appear for the first interview, the State agency shall attempt to schedule another interview. The interview shall be rescheduled by the State agency without requiring the household to provide good cause for failing to appear. However, if the household does not appear for the rescheduled interview, the State agency need not initiate action to schedule any further interviews unless the household requests that another interview be scheduled.

(f) *Verification.* Verification is the use of third-party information or documentation to establish the accuracy of statements on the application.

(1) *Mandatory verification.* State agencies shall verify the following information prior to certification for households initially applying:

(i) *Gross nonexempt income.* Gross nonexempt income shall be verified for all households prior to certification. 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 shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Alien status.* (A) Based on the application, the State agency shall determine if members identified as aliens are eligible aliens, as defined in § 273.4 (a)(2) through (a)(9), by requiring that the household present verification for each alien member.

(B) Aliens in the categories specified in § 273.4(a) (2) and (3) shall present either an Immigration and Naturalization Service (INS) Form I–151 or i–551, or such other documents which identify the aliens' immigration status and

which the State agency determines are reasonable of the aliens' immigration status.

(C) Aliens in the categories specified in § 273.4 (a)(4) through (a)(7) shall present an INS Form I–94: *Arrival-Departure Record* or other documents which identify the aliens' immigration status and which the State agency determines are reasonable evidence of the aliens' immigration status. The State agency shall accept the INS Form I–94 as verification of eligible alien status only if the form is annotated with section 207, 208, 212(d)(5) or 243(h) of the Immigration and Nationality Act or if the form is annotated with any one of the following terms or a combination of the following terms: Refugee, parolee, paroled, or asylum. An INS Form I–94 annotated with any one of the letters (A) through (L) shall be considered verification of ineligible alien status unless the alien can provide other documentation from INS which indicates that the alien is eligible. If the INS Form I–94 does not bear any of the above annotations and the alien has no other verification of alien classification in his or her possession, the State agency shall advise the alien to submit Form G–641, *Application for Verification of Information from Immigration and Naturalization Service Records,* to INS. State agencies shall accept this form when presented by the alien and properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons. The alien shall also be advised that classification under section 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status; that the alien may be eligible if acceptable verification is obtained; and that the alien may contact INS, as stated previously, or otherwise obtain the necessary verification or, if the alien wishes and signs a written consent, that the State agency will contact INS to obtain clarification of the alien's status. If the alien does not wish to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

(D) Aliens in the categories specified in § 273.4(a)(8) and (a)(9) shall present documentation such as, but not limited to, a letter, notice of eligibility, or identification card which clearly identifies the alien has been granted legal status in one of those categories.

(E) The State agency is responsible to offer to contact INS when the alien has an INS document that does not clearly indicate eligible or ineligible alien status. The State agency does not need to offer to contact INS on the alien's behalf when the alien does not provide an INS document. However, when State agencies accept non-INS documentation determined to be reasonable evidence of the alien's immigration status as specified in paragraphs (f)(1)(ii) (B), (C), and (D) of this section, the State agency shall photocopy the document and transmit the photocopy to INS for verification. Pending such verification, the State agency shall not delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status. The State agency does not need to receive the alien applicant's written consent in order to transmit the photocopy to INS.

(F) The State agency shall provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. When the State agency accepts non-INS documentation as specified in paragraphs (f)(1)(ii) (B), (C), and (D) of this section and fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(G) Except as specified in paragraphs (f)(1)(ii)(F) and (f)(10)(i) of this section, the alien applicant whose status is questionable shall be ineligible until the alien provides acceptable documentation. The income and resources of the ineligible alien shall be treated in the same manner as a disqualified individual set forth in § 273.11(c), and

shall be considered available in determining the eligibility of any remaining members.

(iii) *Utility expenses.* The State agency shall verify a household's utility expenses if the household wishes to claim expenses in excess of the State agency's utility standard and the expense would actually result in a deduction. If the household's actual utility expenses cannot be verified before the 30 days allowed to process the application expire, the State agency shall use the standard utility allowance, provided the household is entitled to use the standard as specified in § 273.9(d). If the household wishes to claim expenses for an unoccupied home, the State agency shall verify the household's actual utility expenses for the unoccupied home in every case and shall not use the standard utility allowance.

(iv) *Medical expenses.* The amount of any medical expenses (including the amount of reimbursements) deductible under § 273.9(d)(3) shall be verified prior to initial certification. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, shall be required if questionable.

(v) *Social security numbers.* The State agency shall verify the social security number(s) (SSN) reported by the household by submitting them to the Social Security Administration (SSA) for verification according to procedures established by SSA. The State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the SSN of a household member. Once an SSN has been verified, the State agency shall make a permanent annotation to its file to prevent the unnecessary reverification of the SSN in the future. The State agency shall accept as verified an SSN which has been verified by another program participating in the IEVS described in § 272.8. If an individual is unable to provide an SSN or does not have an SSN, the State agency shall require the individual to submit Form SS–5, Application for a Social Security Number, to the SSA in accordance with procedures in § 273.6. A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

(vi) *Residency.* The residency requirements of § 273.3 shall be verified except in unusual cases (such as homeless households, some migrant farmworker households, or households newly arrived in a project area) where verification of residency cannot reasonably be accomplished. Verification of residency should be accomplished to the extent possible in conjunction with the verification of other information such as, but not limited to, rent and mortgage payments, utility expenses, and identity. If verification cannot be accomplished in conjunction with the verification of other information, then the State agency shall use a collateral contact or other readily available documentary evidence. Documents used to verify other factors of eligibility should normally suffice to verify residency as well. Any documents or collateral contact which reasonably establish the applicant's residency must be accepted and no requirement for a specific type of verification may be imposed. No durational residency requirement shall be established.

(vii) *Identity.* The identity of the person making application shall be verified. Where an authorized representative applies on behalf of a household, the identity of both the authorized representative and the head of household shall be verified. Identity may be verified through readily available documentary evidence, or if this is unavailable, through a collateral contact. Examples of acceptable documentary evidence which the applicant may provide include, but are not limited to, a driver's license, a work or school ID, an ID for health benefits or for another assistance or social services program, a voter registration card, wage stubs, or a birth certificate. Any documents which reasonably establish the applicant's identity must be accepted, and no requirement for a specific type of document, such as a birth certificate, may be imposed.

(viii) *Disability.* (A) The State agency shall verify disability as defined in § 271.2 as follows:

(*1*) For individuals to be considered disabled under paragraphs (2), (3) and (4) of the definition, the household

shall provide proof that the disabled individual is receiving benefits under titles I, II, X, XIV or XVI of the Social Security Act.

(*2*) For individuals to be considered disabled under paragraph (6) of the definition, the household must present a statement from the Veterans Administration (VA) which clearly indicates that the disabled individual is receiving VA disability benefits for a service-connected or non-service-connected disability and that the disability is rated as total or paid at the total rate by VA.

(*3*) For individuals to be considered disabled under paragraphs (7) and (8) of the definition, proof by the household that the disabled individual is receiving VA disability benefits is sufficient verification of disability.

(*4*) For individuals to be considered disabled under paragraphs (5) and (9) of the definition, the State agency shall use the Social Security Administration's (SSA) most current list of disabilities considered permanent under the Social Security Act for verifying disability. If it is obvious to the caseworker that the individual has one of the listed disabilities, the household shall be considered to have verified disability. If disability is not obvious to the caseworker, the household shall provide a statement from a physician or licensed or certified psychologist certifying that the individual has one of the nonobvious disabilities listed as the means for verifying disability under paragraphs (5) and (9) of the definition.

(*5*) For individuals to be considered disabled under paragraph (10) of the definition, the household shall provide proof that the individual receives a Railroad Retirement disability annuity from the Railroad Retirement Board *and* has been determined to qualify for Medicare.

(*6*) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

(B) For disability determinations which must be made relevant to the provisions of § 273.1(a)(2)(ii), the State agency shall use the SSA's most current list of disabilities as the initial step for verifying if an individual has a disability considered permanent under the Social Security Act. However, only those individuals who suffer from one of the disabilities mentioned in the SSA list who are unable to purchase and prepare meals because of such disability shall be considered disabled for the purpose of this provision. If it is obvious to the caseworker that the individual is unable to purchase and prepare meals because he/she suffers from a severe physical or mental disability, the individual shall be considered disabled for the purpose of the provision even if the disability is not specifically mentioned on the SSA list. If the disability is not obvious to the caseworker, he/she shall verify the disability by requiring a statement from a physician or licensed or certified psychologist certifying that the individual (in the physician's/psychologist's opinion) is unable to purchase and prepare meals because he/she suffers from one of the nonobvious disabilities mentioned in the SSA list or is unable to purchase meals because he/she suffers from some other severe, permanent physical or mental disease or nondisease-related disability. The elderly and disabled individual (or his/her authorized representative) shall be responsible for obtaining the cooperation of the individuals with whom he/she resides in providing the necessary income information about the others to the State agency for purposes of this provision.

(ix) State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. State agencies shall 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.

(x) *Household composition.* State agencies shall verify factors affecting the composition of a household, if questionable. Individuals who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency. Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness shall be responsible for proving a claim of separateness (at the State agency's request) in accordance with the provisions of § 273.2(f)(1)(viii).

(xi) *Shelter costs for homeless households.* Homeless households claiming shelter expenses greater than the standard estimate of shelter expenses (as defined in § 273.9(d)(5)(i)) must provide verification of these shelter expenses. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

(xii) *Students.* If a person claims to be physically or mentally unfit for purposes of the student exemption contained in § 273.5(b)(2) and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(xiii) *Legal obligation and actual child support payments.* The State agency shall obtain verification of 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. Documents that are accepted as verification of the household's legal obligation to pay child support shall not be accepted as verification of the household's actual monthly child support payments. State agencies may and are strongly encouraged to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) automated data files. The State agency shall give the household an opportunity to resolve any discrepancy between household verification and CSE records in accordance with paragraph (f)(9) of this section.

(2) *Verification of questionable information.* (i) The State agency shall verify, prior to certification of the household, all other factors of eligibility which the State agency determines are questionable and affect the household's eligibility and benefit level. The State agency shall establish guidelines to be followed in determining what shall be considered questionable information. These guidelines shall not prescribe verification based on race, religion, ethnic background, or national origin. These guidelines shall not target groups such as migrant farmworkers or American Indians for more intensive verification under this provision.

(ii) *Citizenship.* (A) When a household's statement that one or more of its members are U.S. citizens is questionable, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS Form I–179 or INS Form I–197) or U.S. passports. Participation in the AFDC program shall also be considered acceptable verification if verification of citizenship was obtained for that program. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, the State agency shall accept a signed statement from someone who is a U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen. The signed statement shall contain a

warning of the penalties for helping someone commit fraud, such as: If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both.

(B) The member whose citizenship is in question shall be ineligible to participate until proof of U.S. citizenship is obtained. Until proof of U.S. citizenship is obtained, the member whose citizenship is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in § 273.11(c).

(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, including household size where not questionable. Such verification may be required Statewide or throughout a project area, but shall not be imposed on a selective, case-by-case basis on particular households.

(i) The State agency may establish its own standards for the use of verification, provided that, at a minimum, all questionable factors are verified in accordance with paragraph (f)(2) of this section and that such standards do not allow for inadvertent discrimination. For example, no standard may be applied which prescribes variances in verification based on race, religion, ethnic background or national origin, nor may a State standard target groups such as migrant farmworkers or American Indians for more intensive verification than other households. The options specified in this paragraph, shall not apply in those offices of the Social Security Administration (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. The State agency, however, may negotiate with those SSA offices with regard to mandating verification of these options.

(ii) If a State agency opts to verify a deductible expense and obtaining the verification may delay the household's certification, the State agency shall advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses as specified in paragraph (f)(1)(iv) of this section. Shelter costs would be computed without including the unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. If the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense, the household shall be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with paragraph (h)(3) of this section. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(4) *Sources of verification*—(i) *Documentary evidence.* State agencies shall use documentary evidence as the primary source of verification for all items except residency and household size. These items may be verified either through readily available documentary evidence or through a collateral contact, without a requirement being imposed that documentary evidence must be the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document

and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained or is insufficient to make a firm determination of eligibility or benefit level, the eligibility worker may require collateral contacts or home visits. For example, documentary evidence may be considered insufficient when the household presents pay stubs which do not represent an accurate picture of the household's income (such as out-dated pay stubs) or identification papers that appear to be falsified.

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification.

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household.

(iv) *Discrepancies.* Where unverified information from a source other than the household contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to a determination of eligibility or benefits. The State agency may, if it chooses, verify the information directly and contact the household only if such direct verification efforts are unsuccessful. If the unverified information is received through the IEVS, as specified in § 272.8, the State agency may obtain verification from a third party as specified in paragraph (f)(9)(v) of this section.

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

(ii) Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, the State agency may require a collateral contact or a home visit. The State agency, generally, shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall either designate another collateral contact, ask the household to designate another collateral contact or to provide an alternative form of verification, or substitute a home visit. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination.

(7) *State Data Exchange and Beneficiary Data Exchange.* The State agency may verify SSI benefits through the State Data Exchange (SDX), and Social Security benefit information through the Beneficiary Data Exchange (BENDEX), or through verification provided by the household. The State agency may use SDX and BENDEX

data to verify other food stamp eligibility criteria. The State agency may access SDX and BENDEX data without release statements from households, provided the State agency makes the appropriate data request to SSA and executes the necessary data exchange agreements with SSA. The household shall be given an opportunity to verify the information from another source if the SDX or BENDEX information is contradictory to the information provided by the household or is unavailable. Determination of the household's eligibility and benefit level shall not be delayed past the application processing time standards of paragraph (g) of this section if SDX or BENDEX data is unavailable.

(8) *Verification subsequent to initial certification.* (i) *Recertification*—(A) At recertification the State agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than $25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income if the source has not changed and if the amount is unchanged or has changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall require a household eligible for the child support deduction to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

(B) Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(1)(v).

(C) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated. Verification under this paragraph shall be subject to the same verification procedures as apply during initial verification.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income if the source has not changed and if the amount has changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses or actual utility expenses which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(9) *Use of IEVS.* (i) The State agency shall use information obtained through the IEVS to verify the eligibility and benefit level of applicant and participating households, in accordance with procedures specified in § 272.8.

(ii) The State agency may access data through the IEVS provided the disclosure safeguards and data exchange agreements required by part 272 are satisfied.

(iii) The State agency shall take action, including proper notices to households, to terminate, deny, or reduce benefits based on information obtain through the IEVS which is considered verified upon receipt. This information is social security and SSI benefit information obtained from SSA, and AFDC benefit information and UIB information obtained from the agencies administering those programs. If the State agency has information that the IEVS-obtained information about a particular household is questionable, this information shall be considered unverified upon receipt and the State agency shall take action as specified in paragraph (f)(9)(iv) of this section.

(iv) Except as noted in this paragraph, prior to taking action to terminate, deny, or reduce benefits based on information obtained through the IEVS which is considered unverified upon receipt, State agencies shall independently verify the information. Such

unverified information is unearned income information from IRS, wage information from SSA and SWICAs, and questionable IEVS information discussed in paragraph (f)(9)(iii) of this section. Independent verification shall include verification of the amount of the asset or income involved, whether the household actually has or had access to such asset or income such that it would be countable income or resources for food stamp purposes, and the period during which such access occurred. 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.

(v) The State agency shall obtain independent verification of unverified information obtained from IEVS by means of contacting the household and/or the appropriate income, resource or benefit source. If the State agency chooses to contact the household, it must do so in writing, informing the household of the information which it has received, and requesting that the household respond within 10 days. If the household fails to respond in a timely manner, the State agency shall send it a notice of adverse action as specified in § 273.13. The State agency may contact the appropriate source by the means best suited to the situation. When the household or appropriate source provides the independent verification, the State agency shall 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.

(10) *Use of SAVE.* When participating in the INS SAVE Program to verify the validity of documents presented by applicant aliens, State agency's shall use the following procedures:

(i) The State agency shall provide an applicant alien with a reasonable opportunity to submit acceptable documentation of their eligible alien status prior to the 30th day following the date of application. A reasonable opportunity shall be at least 10 days from the date of the State agency's request for an acceptable document. An alien who has been given a reasonable opportunity to submit acceptable documentation and has not done so as of the 30th day following the date of application shall not be certified for benefits until acceptable documentation has been submitted. However, if the 10-day reasonable opportunity period provided by the State agency does not lapse before the 30th day following the date of application, the State agency shall provide the household with benefits no later than 30 days following the date of application *Provided* the household is otherwise eligible.

(ii) The written consent of the alien applicant shall not be required as a condition for the State agency to contact INS to verify the validity of documentation.

(iii) State agencies which access the ASVI database through an automated access shall also submit INS Form G–845, with an attached photocopy of the alien's document, to INS whenever the initial automated access does not confirm the validity of the alien's documentation or a significant discrepancy exists between the data provided by the ASVI and the information provided by the applicant. Pending such responses from either the ASVI or INS Form G–845, the State agency shall not delay, deny, reduce, or terminate the alien's eligibility for benefits on the basis of the individual's alien status.

(iv) If the State agency determines, after complying with the requirements of this section, that the alien is not in an eligible alien status, the State agency shall take action, including proper notices to the household, to terminate, deny or reduce benefits. The State agency shall provide households the opportunity to request a fair hearing under § 273.15 prior to any adverse action.

(v) The use of SAVE shall be documented in the casefile or other agency records. When the State agency is waiting for a response from SAVE, agency records shall 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 shall 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 shall show documentation of the ASVI Query Verification Number and contain a copy of the INS Form G–845.

(g) *Normal processing standard*—(1) *Thirty-day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate (as defined in § 274.2(b)) as soon as possible, but no later than 30 calendar days following the date the application was filed, except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to release from the institution in accordance with § 273.1(e)(2). An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative. Households entitled to expedited processing are specified in paragraph (i) of this section. For residents of public institutions who apply for food stamps prior to their release from the institution in accordance with § 273.1(e)(2), the State agency shall provide an opportunity to participate as soon as possible, but not later than 30 calendar days from the date of release of the applicant from the institution.

(2) *Combined allotments.* Households which apply for initial month benefits (as described in § 273.10(a)) after the 15th of the month, are processed under normal processing timeframes, have completed the application process within 30 days of the date of application, and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, may be issued a combined allotment at State agency option which includes prorated benefits for the month of application and benefits for the first full month of participation. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(3) *Denying the application.* Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the State agency to express interest in pursuing the application, the State agency shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. In cases where the State agency was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the State agency may also deny the application on the 30th day if the State agency provided assistance to the household in obtaining verification as specified in paragraph (f)(5) of this section, but the household failed to provide the requested verification.

(h) *Delays in processing.* If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall take the following action:

(1) *Determining cause.* The State agency shall first determine the cause of the delay using the following criteria:

(i) A delay shall be considered the fault of the household if the household has failed to complete the application process even though the State agency has taken all the action it is required to take to assist the household. The State agency must have taken the following actions before a delay can be considered the fault of the household:

(A) For households that have failed to complete the application form, the State agency must have offered, or attempted to offer, assistance in its completion.

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

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

the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

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

(ii) Delays that are the fault of the State agency include, but are not limited to, those cases where the State agency failed to take the actions described in paragraphs (h)(1)(i) (A) through (D) of this section.

(2) *Delays caused by the household.* (i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(A) The State agency has the option of sending the household either a notice of denial or a notice of pending status on the 30th day. The option chosen may vary from one project area to another, provided the same procedures apply to all households within a project area. However, if a notice of denial is sent and the household takes the required action within 60 days following the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household failed to take the required action within 60 days following the date the application was filed, or if the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing, and the household fails to provide the necessary verification by this 30th day.

(B) State agencies may include in the notice a request that the household report all changes in circumstances since it filed its application. The information that must be contained on the notice of denial or pending status is explained in § 273.10(g)(1) (ii) and (iii).

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(3) *Delays caused by the State agency.* (i) Whenever a delay in the initial 30-day period is the fault of the State agency, the State agency shall take immediate corrective action. Except as specified in §§ 273.2(f)(1)(ii)(F) and 273.2(f)(10)(i), the State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day following the date the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process. If verification is lacking the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(ii) If the household is found to be eligible during the second 30-day period, the household shall be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, the State agency shall deny the application.

(4) *Delays beyond 60 days.* (i) If the State agency is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and the State agency was at fault for the delay in the initial 30 days, the household shall receive benefits retroactive to the month of application. However, if the initial delay was the household's fault, the household shall receive benefits retroactive only to the month following the month of application. The State agency may use the original application to determine the household's eligibility in the months following the 60-day period, or it may require the household to file a new application.

(ii) If the State agency is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, the State agency may continue to process the original application, or deny the case and notify the household to file a new application. If the case is denied, the household shall also be advised of its possible entitlement to benefits lost as a result of State agency caused delays in accordance with § 273.17. If the State agency was also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

(iii) If the household is at fault for not completing the application process by the end of the second 30-day period, the State agency shall deny the application and require the household to file a new application if it wishes to participate. If however, the State agency has chosen the option of holding the application pending only until 30 days following the date of the initial request for the particular verification that was missing, and verification is not received by that 30th day, the State agency may immediately close the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household shall not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of the State agency.

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

(i) Households with less than $150 in monthly gross income, as computed in § 273.10 provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(ii) Migrant or seasonal farmworker households who are destitute as defined in § 273.10(e)(3) provided their liquid resources (i.e., cash on hand, checking or savings accounts, savings certificates, and lump sum payments as specified in § 273.9(c)(8)) do not exceed $100;

(iii) Households in which all members are ''homeless individuals'' as defined in § 271.2 and which meet the monthly income eligibility test required under § 273.9(a) and the maximum resource test specified in § 273.8(a); or

(iv) Households whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage, and utilities (including entitlement to a SUA, as appropriate, in accordance with § 273.9(d)).

(2) *Identifying households needing expedited service.* The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.

(3) *Processing standards.* All households receiving expedited service, except those receiving it during months

in which allotments are suspended or cancelled, shall have their cases processed in accordance with the following provisions. Those households receiving expedited service during suspensions or cancellations shall have their cases processed in accordance with the provisions of § 271.7(e)(2).

(i) *General.* For households entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the fifth calendar day following the date an application was filed. For a resident of a public institution who applies for benefits prior to his/her release from the institution in accordance with § 273.1(e)(2) and who is entitled to expedited service, the date of filing of his/her food stamp application is the date of release of the applicant from the institution. Whatever system a State agency uses to ensure meeting this delivery standard shall be designed to allow a reasonable opportunity for redemption of ATPs no later than the fifth calendar day following the day the application was filed.

(ii) *Drug addicts and alcoholics, group living arrangement facilities.* For residents of drug addiction or alcoholic treatment and rehabilitation centers and residents of group living arrangements who are entitled to expedited service, the State agency shall make available to the recipient coupons or an ATP card not later than the 5 calendar days following the date an application was filed.

(iii) *Out-of-office interviews.* If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing. If the State agency conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be calculated in the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.

(iv) *Late determinations.* If the prescreening required in paragraph (i)(2) of this section fails to identify a household as being entitled to expedited service and the State agency subsequently discovers that the household is entitled to expedited service, the State agency shall provide expedited service to households within the processing standards described in paragraphs (i)(3) (i) and (ii) of this section, except that the processing standard shall be calculated from the date the State agency discovers the household is entitled to expedited service.

(v) *Residents of shelters for battered women and children.* Residents of shelters for battered women and children who are otherwise entitled to expedited service shall be handled in accordance with the time limits in paragraph (i)(3)(i) of this section.

(4) *Special procedures for expediting service.* The State agency shall use the following procedures when expediting certification and issuance:

(i) In order to expedite the certification process, the State agency shall use the following procedures:

(A) In all cases, the applicant's identity (i.e., the identity of the person making the application) shall be verified through a collateral contact or readily available documentary evidence as specified in paragraph (f)(1) of this section.

(B) All reasonable efforts shall be made to verify within the expedited processing standards, the household's residency in accordance with § 273.2(f)(1)(vi), income statement (including a statement that the household has no income), liquid resources and all other factors required by § 273.2(f), through collateral contacts or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards prescribed in paragraph (i)(3) of this section, solely because these eligibility factors have not been verified.

State agencies also may verify factors other than identity, residency, and income provided that verification can be accomplished within expedited processing standards. State agencies should attempt to obtain as much additional

verification as possible during the interview, but should not delay the certification of households entitled to expedited service for the full timeframes specified in paragraph (i)(3) of this section when the State agency has determined it is unlikely that other verification can be obtained within these timeframes. Households entitled to expedited service will be asked to furnish a social security number for each person or apply for one for each person before the second full month of participation. Those household members unable to provide the required SSN's or who do not have one prior to the second full month of participation shall be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in §273.6(d), except that households with a newborn may have up to 6 months following the month the baby was born to supply an SSN or proof of an application for an SSN for the newborn in accordance with §273.6(b)(4). The State agency may attempt to register other household members but shall postpone the registration of other household members if it cannot be accomplished within the expedited service timeframes. With regard to the work registration requirements specified in §273.7, the State agency shall, at a minimum, require the applicant to register (unless exempt or unless the household has designated an authorized representative to apply on its behalf in accordance with §273.1(f)). The State agency may attempt registration of other household members by requesting that the applicant complete the work registration forms for other household members to the best of his or her ability. The State agency may also attempt to accomplish work registration for other household members in a timely manner through other means, such as calling the household. The State agency may attempt to verify questionable work registration exemptions, but such verification shall be postponed if the expedited service timeframes cannot be met.

(ii) Once an acceptable collateral contact has been designated, the State agency shall promptly contact the collateral contact, in accordance with the provisions of paragraph (f)(4)(ii) of this section. Although the household has the primary responsibility for providing other types of verification, the State agency shall assist the household in promptly obtaining the necessary verification.

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned normal certification periods. If verification was postponed, the State agency may certify these households for the month of application (the month of application and the subsequent month for those households applying after the 15th of the month) or, at the State agency's option, may assign normal certification periods to those households whose circumstances would otherwise warrant longer certification periods. State agencies, at their option, may request any household eligible for expedited service which applies after the 15th of the month and is certified for the month of application and the subsequent month only to submit a second application (at the time of the initial certification) if the household's verification is postponed.

(A) For households applying on or before the 15th of the month, the State agency may assign a one-month certification period or assign a normal certification period. Satisfaction of the verification requirements may be postponed until the second month of participation. If a one-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household has to satisfy all verification requirements that were postponed. For subsequent months, the household must reapply and satisfy all verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not appear for the interview, the State agency does not need to contact the household again.

(B) For households applying after the 15th of the month, the State agency may assign a 2-month certification period or a normal certification period of

no more than 12 months. Verification may be postponed until the third month of participation, if necessary, to meet the expedited timeframe. If a two-month certification period is assigned, the notice of eligibility may be combined with the notice of expiration or a separate notice may be sent. The notice of eligibility must explain that the household is obligated to satisfy the verification requirements that were postponed. For subsequent months, the household must reapply and satisfy the verification requirements which were postponed or be certified under normal processing standards. If the household does not satisfy the postponed verification requirements and does not attend the interview, the State agency does not need to contact the household again. When a certification period of longer than 2 months is assigned and verification is postponed, households must be sent a notice of eligibility advising that no benefits for the third month will be issued until the postponed verification requirements are satisfied. The notice must also advise the household that if the verification process results in changes in the household's eligibility or level of benefits, the State agency will act on those changes without advance notice of adverse action.

(C) Households which apply for initial benefits (as described in § 273.10(a)) after the 15th of the month, are entitled to expedited service, have completed the application process, and have been determined eligible to receive benefits for the initial month and the next subsequent month, shall 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 timeframe. If necessary, verification shall be postponed to meet the expedited timeframe. The benefits shall be issued in accordance with § 274.2(c) of this chapter.

(D) The provisions of paragraph (i)(4)(iii)(C) of this section do not apply to households which have been determined ineligible to receive benefits for the month of application or the following month, or to households which have not satisfied the postponed verification requirements. However, households eligible for expedited service may receive benefits for the initial month and next subsequent month under the verification standards of paragraph (i)(4) of this section.

(E) If the State agency chooses to exercise the option to require a second application in accordance with paragraph (i)(4)(iii) of this section and receives the application before the third month, it shall not deny the application but hold it pending until the third month. The State agency will issue the third month's benefits within 5 working days from receipt of the necessary verification information but not before the first day of the month. If the postponed verification requirements are not completed before the end of the third month, the State agency shall terminate the household's participation and shall issue no further benefits.

(iv) 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 requirements that were postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification. The provisions of this section shall not apply at recertification if a household reapplies before the end of its current certification period.

(v) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) *PA, GA and categorically eligible households.* Households applying for public assistance (PA) shall be notified of their right to apply for food stamp benefits at the same time and shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. The applications of these households shall be processed in accordance with the requirements of paragraph (j)(1) of this section, and their eligibility shall be based solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single

Statewide GA application form, households in which all members are included in a State or local GA grant shall have their application for food stamps included in the GA application form. State agencies shall use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The eligibility of jointly processed GA households shall be based solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. The benefit levels of all households shall be based solely on food stamp criteria. Jointly processed and categorically eligible households shall be certified in accordance with food stamp procedural, timeliness, and notice requirements, including the 5-day expedited service provisions of § 273.2(i) and normal 30-day application processing standards of § 273.2(g). Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, individuals are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Individuals entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. Individuals not receiving GA, PA, or SSI benefits who are entitled to Medicaid only shall not be considered recipients.

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

(ii) The State agency shall conduct a single interview at initial application for both public assistance and food stamp purposes. PA households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and public assistance. A household's eligibility for food stamp out-of-office interview provisions in § 273.2(e)(2) does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both public assistance and food stamps, the verification procedures described in paragraphs (f)(1) through (f)(8) of this section shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, the State agency shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the State agency has sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section but does not have sufficient verification to meet the PA verification rules.

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if

it meets all the criteria concerning categorical eligibility in § 273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or it authorized representative to initial *all* changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved.

(v) Households whose PA applications are denied shall not be required to file new food stamp applications but shall

have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

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

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph § 273.2(j);

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(iii) of this section.

(ii) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

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

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.16 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

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

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

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

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

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

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

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

(D) Institutionalized in a nonexempt facility as defined in § 273.1(e).

(E) Ineligible because of failure to comply with a work requirement of § 273.7.

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

work registration is subject to the other work requirements in § 273.7.

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

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

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

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

(D) Section 273.10(b).

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

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

(3) *Applicant GA households.* (i) State agencies shall use the joint application processing procedures in paragraph (j)(1) of this section for GA households, except for the effective date of categorical eligibility, when the criteria in paragraphs (j)(3)(i) (A) and (B) of this section are met. Benefits for GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, shall be provided from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1991) or local GA categorical eligibility (August 1, 1992), whichever is later:

(A) The State agency administers a GA program which uses formalized application procedures and eligibility criteria that test levels of income and resources; and,

(B) Administration of the GA program is integrated with the administration of the PA or food stamp programs, in that the same eligibility workers process applications for GA benefits and PA or food stamp benefits.

(ii) State agencies in which different eligibility workers process applications for GA benefits and PA or food stamp benefits, but procedures otherwise meet the criteria in paragraph (j)(3)(i) of this section may, with FCS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section, except for the effective date of categorical eligibility for GA households. Benefits shall be provided GA households that are categorically eligible, as provided in paragraph (j)(4) of this section, from the date of the original food stamp application, the beginning of the period for which GA benefits are authorized, or the effective date of State GA categorical eligibility (February 1, 1992) or local GA categorical eligibility (August 1, 1992), whichever is later.

(iii) Requirements for combining the GA and food stamp application forms or providing food stamp application forms to GA applicant households depend on the extent to which application forms and administration of the GA and food stamp programs are integrated.

(A) State agencies that have a single Statewide GA application form shall include the food stamp application form in the GA application form and shall inform GA applicant households that they may be categorically eligible for food stamps. The joint GA and food stamp application form shall clearly indicate that the household is providing information for both programs and is subject to the criminal penalties of both programs for making false statements. The application form must also notify the household that if food stamp benefits are issued before the GA is approved, the food stamp benefits may be reduced without further notice when the GA assistance is approved (as specified in § 273.2(j)(1)(iv) and § 273.13(b)(6)). With FCS approval, the joint GA and food stamp application form may be used for households applying only for food stamps.

(B) State agencies that do not have a single Statewide GA application form but have local offices in which the same agency administers both the GA program and the Food Stamp Program shall provide households applying for a local GA grant with a food stamp application form at the time of their application for GA, along with information concerning how to apply for food stamps, and information about possible categorical eligibility.

(C) If GA and the Food Stamp Program are administered by separate offices and a single application form is not required, the State agency shall encourage the agencies administering GA to refer GA applicants to the local food stamp office or provide applicant

households with food stamp application forms and inform GA applicants of their potential categorical eligibility for food stamps. State agencies may allow GA applicants to leave a food stamp application form at the GA office which contains, at a minimum, the applicant's name, address and signature. If the GA office accepts a food stamp application form, it is responsible for forwarding the application form the same day to the appropriate food stamp office for processing. The procedural and timeliness requirements that apply to the application process shall begin when the food stamp office receives the application form. The GA office may advise households that they may receive faster service if they take the application form directly to the food stamp office.

(D) In areas where GA programs are administered by agencies such as the Bureau of Indian Affairs of the Department of the Interior, the State agency shall endeavor to gain the cooperation of the agencies in referring GA applicants to the food stamp office. Where possible, this referral should consist of informing the GA applicants of their potential eligibility for food stamp benefits, providing them with food stamp applications and directing them to the local food stamp office.

(4) *Categorically eligible GA households.* Households in which each member receives benefits from a State or local GA program which meets the criteria for conferring categorical eligibility in paragraph (j)(4)(i) of this section shall be categorically eligible for food stamps unless the individual or household is ineligible as specified in paragraph (j)(4)(iv) and (j)(4)(v) of this section.

(i) *Certification of qualifying programs.* Recipients of benefits from programs that meet the criteria in paragraphs (j)(4)(i)(A) through (j)(4(i)(C) of this section shall be considered categorically eligible to receive benefits from the Food Stamp Program. If a program does not meet all of these criteria, the State agency may submit a program description to the appropriate FCS regional office for a determination. The description should contain, at a minimum, the type of assistance provided, the income eligibility standard, and the period for which the assistance is provided.

(A) The program must have income standards which do not exceed the gross income eligibility standard in § 273.9(a)(1). The rules of the GA program apply in determining countable income.

(B) The program must provide GA benefits as defined in § 271.2 of this part.

(C) The program must provide benefits which are not limited to one-time emergency assistance.

(ii) *Verification requirements.* In determining whether a household is categorically eligible, the State agency shall verify that each member receives PA benefits, SSI, or GA from a program that meets the criteria in paragraph (j)(4)(i) section or that has been certified by FCS as an appropriate program and that it includes no individuals who have been disqualified as provided in paragraph (j)(4)(iv) or (j)(2)(v) of this section. The State agency shall also verify household composition if it is questionable, in accordance with § 273.2(f), in order to determine that the household meets the definition of a household in § 273.1(a).

(iii) *Deemed eligibility factors.* When determining eligibility for a categorically eligible household, all Food Stamp Program requirements 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 provision in § 273.10(b) regarding resources available the time of the interview does not apply to categorically eligible households.

(B) Gross and net income limits. None of the provisions in § 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)(1)(i) and 273.10(c) relating to the income eligibility determination also do not apply to categorically eligible households.

(C) 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).

(D) Residency.

(E) Sponsored alien information.

(iv) *Ineligible household members.* No person shall be included as a member of an otherwise categorically eligible household if that person is:

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

(B) An ineligible student, as defined in § 273.5;

(C) Disqualified for failure to provide or apply for an SSN, as required by § 273.6;

(D) A household member, not the head of household, disqualified for failure to comply with a work requirement of § 273.7;

(E) Disqualified for intentional program violation, as required by § 273.16;

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

(G) An individual who is institutionalized in a nonexempt facility, as defined in § 273.1(e).

(v) *Ineligible households.* A household shall not be considered categorically eligible if:

(A) It refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility, as described in § 273.2(d) and § 273.21(m)(1)(ii);

(B) The household is disqualified because the head of household fails to comply with a work requirement of § 273.7;

(C) The household is ineligible under the striker provisions of § 273.1(g); or

(D) The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Program, as provided in § 273.8(i).

(vi) *Combination households.* Households consisting entirely of recipients of PA, SSI and/or GA from a program that meets the requirements of § 273.2(j)(4)(i) shall be categorically eligible in accordance with the provisions for paragraphs (j)(2)(iii) and (j)(2)(v) of this section for members receiving PA and SSI or provisions of paragraphs (j)(4) (iv) and (v) of this section for members receiving GA.

(5) *Households with some PA or GA recipients.* State agencies that use the joint application processing procedures in paragraphs (j)(1) and (j)(3) of this section may apply these procedures to a food stamp applicant household in which some, but not all, members are in the PA/GA filing unit, except for procedures concerning categorical eligibility. If the State agency decides not to use the joint application procedures for these households, the households shall file separate applications for PA/GA and food stamp benefits. This decision shall not be made on a case-by-case basis, but shall be applied uniformly to all households of this type in a project area.

(k) *SSI households.* For purposes of this paragraph, SSI is defined as Federal SSI payments made under title XVI of the Social Security Act, federally administered optional supplementary payments under section 1616 of that Act, or federally administered mandatory supplementary payments made under section 212(a) of Pub. L. 93–66. Except in cashout States (§ 273.20), households which have not applied for food stamps in the thirty preceding days, and which do not have applications pending, may apply and be certified for food stamp benefits in accordance with the procedures described in § 273.2(k)(1)(i) or § 273.2(k)(1)(ii) and with the notice, procedural and timeliness requirements of the Food Stamp Act of 1977 and its implementing regulations. Households applying simultaneously for SSI and food stamps shall be subject to food stamp eligibility criteria, and benefit levels shall be based solely on food stamp eligibility criteria until the household is considered categorically eligible. However, households in which all members are either PA or SSI recipients or authorized to receive PA or SSI benefits (as discussed in § 273.2(j)) shall be food stamp eligible based on their PA/SSI status as

provided for in § 273.2(j)(1)(iv) and (j)(2). Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients. The State agency shall make an eligibility determination based on information provided by SSA or by the household.

(1) *Initial application and eligibility determination.* At each SSA office, the State agency shall either arrange for SSA to complete and forward food stamp applications, or the State agency shall outstation State food stamp eligibility workers at the SSA Offices with SSA's concurrence, based upon an agreement negotiated between the State agency and the SSA.

(i) If the State agency arranges with the SSA to complete and forward food stamp applications the following actions shall be taken:

(A) Whenever a member of a household consisting only of SSI applicants or recipients transacts business at an SSA office, the SSA shall inform the household of:

(*1*) Its right to apply for food stamps at the SSA office without going to the food stamp office; and

(*2*) Its right to apply at a food stamp office if it chooses to do so.

(B) The SSA will accept and complete food stamp applications received at the SSA Office from SSI households and forward them, within one working day after receipt of a signed application, to a designated office of the State agency. SSA shall also forward to the State agency a transmittal form which will be approved by SSA and FCS. The SSA will use the national food stamp application form for joint processing. State agencies may substitute a State food stamp application, provided that prior approval is received from both FCS and SSA. SSA shall approve, deny, or comment upon FCS-approved State food stamp applications within thirty days of their submission to SSA.

(C) SSA will accept and complete food stamp applications from SSI households received by SSA staff in contact stations. SSA will forward all food stamp applications from SSI households to the designated food stamp office.

(D) The SSA staff shall complete joint SSI and food stamp applications for residents of public institutions in accordance with § 273.1(e)(2).

(E) The State agency shall designate an address for the SSA to forward food stamp applications and accompanying information to the State agency for eligibility determination. Applications and accompanying information must be forwarded to the agreed upon address in accordance with the time standards contained in § 273.2(k)(1)(i)(B).

(F) Except for applications taken in accordance with paragraph (k)(1)(i)(D) of this section, the State agency shall make an eligibility determination and issue food stamp benefits to eligible SSI households within 30 days following the date the application was received by the SSA. Applications shall be considered filed for normal processing purposes when the signed application is received by SSA. The expedited processing time standards shall begin on the date the State agency receives a food stamp application. The State agency shall make an eligibility determination and issue food stamp benefits to a resident of a public institution who applies jointly for SSI and food stamps within 30 days following the date of the applicant's release from the institution. Expedited processing time standards for an applicant who has applied for food stamps and SSI prior to release shall also begin on the date of the applicant's release from the institution in accordance with § 273.2 (i)(3)(i). SSA shall notify the State agency of the date of release of the applicant from the institution. If, for any reason, the State agency is not notified on a timely basis of the applicant's release date, the State agency shall restore benefits in accordance with § 273.17 to such applicant back to the date of release. Food stamp applications and supporting documentation sent to an incorrect food stamp office shall be sent to the correct office, by the State agency, within one working day of their receipt in accordance with § 273.2(c)(2)(ii).

(G) Households in which all members are applying for or participating in SSI

will not be required to see a State eligibility worker, or otherwise be subjected to an additional State interview. The food stamp application will be processed by the State agency. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits unless: the application is improperly completed; mandatory verification required by §273.2(f)(1) is missing; or, the State agency determines that certain information on the application is questionable. In no event would the applicant be required to appear at the food stamp office to finalize the eligibility determination. Further contact made in accordance with this paragraph shall not constitute a second food stamp certification interview.

(H) SSA shall refer non-SSI households to the correct food stamp office. The State agencies shall process those applications in accordance with the procedures noted in §273.2. Applications from such households shall be considered filed on the date the signed application is taken at the correct State agency office, and the normal and expedited processing time standards shall begin on that date.

(I) The SSA shall prescreen all applications for entitlement to expedited services on the day the application is received at the SSA office and shall mark ''Expedited Processing'' on the first page of all households' applications that appear to be entitled to such processing. The SSA will inform households which appear to meet the criteria for expedited service that benfits may be issued a few days sooner if the household applies directly at the food stamp office. The household may take the application from SSA to the food stamp office for screening, an interview, and processing of the application. This provision does not apply to applications described in paragraph (k)(1)(i)(D) of this section.

(J) The State agency shall prescreen all applications received from the SSA for entitlement to expedited service on the day the application is received at the correct food stamp office. All SSI households entitled to expedited service shall be certified in accordance with §273.2(i) except that the expedited processing time standard shall begin on the date the application is received at the correct State agency office, unless the applicant is a resident of a public institution as described in §273.1(e)(2).

(K) The State agency shall develop and implement a method to determine if members of SSI households whose applications are forwarded by the SSA are already participating in the Food Stamp Program directly through the State agency.

(L) If SSA takes an SSI application or redetermination on the telephone from a member of a pure SSI household, a food stamp application shall also be completed during the telephone interview. In these cases, the food stamp application shall be mailed to the claimant for signature for return to the SSA office or to the State agency. SSA shall then forward any food stamp applications it receives to the State agency. The State agency may not require the household to be interviewed again in the food stamp office. The State agency shall not contact the household further in order to obtain information for certification for food stamp benefits except in accordance with §273.2(k)(1)(i)(F).

(M) To SSI recipients redetermined for SSI by mail, the SSA shall send a stuffer informing them of their right to file a food stamp application at the SSA office (if they are members of a pure SSI household) or at their local food stamp office, and their right to an out-of-office food stamp interview to be performed by the State agency if the household is unable to appoint an authorized representative.

(N) Section 272.4 bilingual requirements shall not apply to the Social Security Administration.

(O) State agencies shall provide and SSA shall distribute an information sheet or brochure to all households processed under this paragraph. This material shall inform the household of the following: The address and telephone number of the household's correct food stamp office, the remaining actions to be taken in the application process, and a statement that a household should be notified of the food stamp determinations within thirty days and can contact the food stamp office if it receives no notification

within thirty days, or has other questions or problems. It shall also include the client's rights and responsibilities (including fair hearings, authorized representatives, out-of-office interviews, reporting changes and timely reapplication), information on how and where to obtain coupons, and how to use coupons (including the commodities clients may purchase with coupons).

(P) As part of the SSA-State agency joint food stamp processing agreement, States may negotiate, on behalf of project areas, to have SSA provide initial eligibility and payment data where the local area is unable to access accurate and timely data through the State's SDX. However, in negotiating such agreements, SSA may challenge a State's determination that it does not have the computer capability to use SDX data. If SSA, FCS, and the State are unable to resolve this matter, and SSA determines that a State does have the capability to provide accurate and timely SDX data to the food stamp project area, SSA is not required to provide alternate means of transmitting initial SSI eligibility and payment data.

(ii) If the State agency chooses to outstation eligibility workers at SSA offices, with SSA's concurrence, the following actions shall be completed.

(A) SSA will provide adequate space for State food stamp eligibility workers in SSA offices.

(B) The State agency shall have at least one outstationed worker on duty at all time periods during which households will be referred for food stamp application processing. In most cases this would require the availability of an outstationed worker throughout normal SSA business hours.

(C) The following households shall be entitled to file food stamp applications with, and be interviewed by an outstationed eligibility worker:

(*1*) Households containing an applicant for or recipient of SSI;

(*2*) Households which do not have an applicant for or recipient of SSI, but which contain an applicant for or recipient of benefits under title II of the Social Security Act, if the State agency and SSA have an agreement to allow the processing of such households at SSA offices.

(D) Households shall be interviewed for food stamps on the day of application unless there is insufficient time to conduct an interview. The State agency shall arrange for the outstationed worker to interview applicants as soon as possible.

(E) The State agency shall not refuse to provide service to persons served by the SSA office because they do not reside in the county or project area in which the SSA office is located, provided, however, that they reside within the jurisdictions served by the SSA office and the State agency. The State agency is not required to process the applications of persons who are not residing within the SSA office jurisdiction but who do reside within the State agency's jurisdiction, other than to forward the forms to the correct food stamp offices.

(F) The State agency may permit the eligibility worker outstationed at the SSA to determine the eligibility of households, or may require that completed applications be forwarded elsewhere for the eligibility determination.

(G) Applications from households entitled to joint processing through an outstationed eligibility worker shall be considered filed on the date they are submitted to that worker. Both the normal and expedited service time standards shall begin on that date.

(H) Households not entitled to joint processing shall be entitled to obtain and submit applications at the SSA office. The outstationed eligibility worker need not process these applications except to forward them to the correct food stamp office where they shall be considered filed upon receipt (any activities beyond acceptance and referral of the application would require SSA concurrence). Both the normal and expedited service time standards shall begin on that date.

(iii) Regardless of whether the State agency or SSA conducts the food stamp interview, the following actions shall be taken:

(A) *Verification*. (*1*) The State agency shall ensure that information required by § 273.2(f) is verified prior to certification for households initially applying. Households entitled to expedited

certification services shall be processed in accordance with § 273.2(i).

(*2*) The State agency has the option of verifying SSI benefit payments through the State Data Exchange (SDX), the Beneficiary Data Exchange (BENDEX) and/or through verification provided by the household.

(*3*) State agencies may verify other information through SDX and BENDEX but only to the extent permitted by data exchange agreements with SSA. Information verified through SDX or BENDEX shall not be reverified unless it is questionable. Households shall be given the opportunity to provide verification from another source if all necessary information is not available on the SDX or the BENDEX, or if the SDX/BENDEX information is contradictory to other household information.

(B) *Certification period.* (*1*) State agencies shall certify households under these procedures for up to twelve months, according to the standards in § 273.10(f), except for State agencies which must assign the initial certification period to coincide with adjustments to the SSI benefit amount as designated in § 273.10(f)(3)(iii).

(*2*) In cases jointly processed in which the SSI determination results in denial, and the State agency believes that food stamp eligibility or benefit levels may be affected, the State agency shall send the household a notice of expiration advising that the certification period will expire the end of the month following the month in which the notice is sent and that it must reapply if it wishes to continue to participate. The notice shall also explain that its certification period is expiring because of changes in circumstances which may affect food stamp eligibility or benefit levels and that the household may be entitled to an out-of-office interview, in accordance with § 273.2(e)(2).

(C) *Changes in circumstances.* (*1*) Households shall report changes in accordance with the requirements in § 273.12. The State agency shall process changes in accordance with § 273.12.

(*2*) Within ten days of learning of the determination of the application for SSI through SDX, the household, advisement from SSA where SSA agrees to do so for households processed under § 273.2(k)(1)(i), or from any other source, the State agency shall take required action in accordance with § 273.12. State agencies are encouraged to monitor the results of the SSI determination through SDX and BENDEX to the extent practical.

(*3*) The State agency shall process adjustments to SSI cases resulting from mass changes, in accordance with provisions of § 273.12(e).

(D) *SSI households applying at the food stamp office.* The State agency shall allow SSI households to submit food stamp applications to local food stamp offices rather than through the SSA if the household chooses. In such cases all verification, including that pertaining to SSI program benefits, shall be provided by the household, by SDX or BENDEX, or obtained by the State agency rather than being provided by the SSA.

(E) *Restoration of lost benefits.* The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency or by the Social Security Administration through joint processing. Such an error shall include, but not be limited to, the loss of an applicant's food stamp application after it has been filed with SSA or with a State agency's outstationed worker. Lost benefits shall be restored in accordance with § 273.17.

(2) *Recertification.* (i) The State agency shall complete the application process and approve or deny timely applications for recertification in accordance with § 273.14 of the food stamp regulations. A face-to-face interview shall be waived if requested by a household consisting entirely of SSI participants unable to appoint an authorized representative. The State agency shall provide SSI households with a notice of expiration in accordance with § 273.14(b), except that such notification shall inform households consisting entirely of SSI recipients that they are entitled to a waiver of a face-to-face interview if the household is unable to appoint an authorized representative.

(ii) Households shall be entitled to make a timely application (in accordance with § 273.14(b)(3)) for food stamp

recertification at an SSA office under the following conditions.

(A) In SSA offices where §273.2(k)(1)(i) is in effect, SSA shall accept the application of a pure SSI household and forward the completed application, transmittal form and any available verification to the designated food stamp office. Where SSA accepts and refers the application in such situations, the household shall not be required to appear at a second office interview, although the State agency may conduct an out-of-office interview, if necessary.

(B) In SSA offices where §273.2(k)(1)(ii) is in effect, the outstationed worker shall accept the application and interview the recipient and the State agency shall process the application according to §273.14.

(l) *Households applying for or receiving social security benefits.* An applicant for or recipient of social security benefits under title II of the Social Security Act shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a Food Stamp Program application at the SSA office. The SSA office is not required to accept applications and conduct interviews for title II applicants/recipients in the manner prescribed in §273.2(k) for SSI applicants/recipients unless the State agency has chosen to outstation eligibility workers at the SSA office and has an agreement with SSA to allow the processing of such households at SSA offices. In these cases, processing shall be in accordance with §273.2(k)(1)(ii).

(m) *Households where not all members are applying for or receiving SSI.* An applicant for or recipient of SSI shall be informed at the SSA office of the availability of benefits under the Food Stamp Program and the availability of a food stamp application at the SSA office. The SSA office is not required to accept applications or to conduct interviews for SSI applicants or recipients who are not members of households in which all are SSI applicants or recipients unless the State agency has chosen to outstation eligibility workers at the SSA office. In this case, processing shall be in accordance with §273.2(k)(1)(ii).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.3 Residency.

(a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in §271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in §271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with §273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

(b) When a household moves within the State, the State agency may require the household to reapply in the new project area or it may transfer the household's casefile to the new project area and continue the household's certification without reapplication. If the State agency chooses to transfer the case, it shall act on changes in household circumstances resulting from the move in accordance with §273.12(c) or §273.21. It shall also ensure that duplicate participation does not occur in accordance with §272.4(f) of this chapter, and that the transfer of a household's case shall not adversely affect the household.

[46 FR 60166, Dec. 8, 1981, as amended by Amdt. 211, 47 FR 53317, Nov. 26, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* State agencies shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

(1) A United States citizen.

(2) An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act. However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in paragraph (a)(8) of this section.

(3) An alien who entered the United States prior to January 1, 1972 or some later date as required by law, and has continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.

(4) An alien who is qualified for entry pursuant to section 207 or 208 of the Immigration and Nationality Act.

(5) An alien granted asylum through an exercise of discretion by the Attorney General pursuant to section 208 of the Immigration and Nationality Act.

(6) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a result of a grant of parole by the Attorney General.

(7) An alien living within the United States for whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act.

(8) An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for temporary or permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. Such aliens may obtain lawful permanent resident status under section 245(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988.

(9) An alien who is, as of June 1, 1987, or thereafter, a special agricultural worker and lawfully admitted for temporary residence in accordance with section 210(a) of the Immigration and Nationality Act.

(b) *Ineligible aliens.* Aliens other than those described in paragraph (a) of this section shall not be eligible to participate. This includes, but is not limited to, alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien shall be handled as outlined in § 273.11(c)(2).

(d) *Awaiting verification.* If verification of eligible alien status as required by § 273.2(f) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The income and resources of the individual whose alien status is unverified shall be handled as outlined in § 273.11(c) and considered available in determining the eligibility of the remaining household members. If verification of eligible alien status is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with timeliness standards in § 273.12.

(e) *Reporting illegal aliens.* (1) The State agency shall immediately inform the local INS office whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the United States in violation of the Immigration and Nationality Act.

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, that member should be classified as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, that person should be classified as an ineligible alien. In such cases the State agency

shall not continue efforts to obtain that documentation.

[Amdt. 189, 47 FR 17763, Apr. 23, 1982, as amended by Amdt. 269, 51 FR 10785, Mar. 28, 1986; 52 FR 20058, May 29, 1987; 52 FR 22888, June 16, 1987; 53 FR 6558, Mar. 2, 1988; 56 FR 63596, Dec. 4, 1991; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§273.5 Students.

(a) *Applicability*. An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Aid to Families with Dependent Children under Title IV of the Social Security Act;

(4) Be enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program;

(5) Be employed for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receiving weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

(6) Be participating in a State or federally financed work study program during the regular school year.

(i) To qualify under this provision, the student must be approved for work study at the time of application for food stamps, the work study must be approved for the school term, and the student must anticipate actually working during that time. The exemption shall begin with the month in which the school term begins or the month work study is approved, whichever is later. Once begun, the exemption shall continue until the end of the month in which the school term ends, or it becomes known that the student has refused an assignment.

(ii) The exemption shall not continue between terms when there is a break of a full month or longer unless the student is participating in work study during the break.

(7) Be participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer;

(8) Be responsible for the care of a dependent household member under the age of 6;

(9) Be responsible for the care of a dependent household member who has reached the age of 6 but is under age 12 when the State agency has determined that adequate child care is not available to enable the student to attend class and comply with the work requirements of paragraph (b)(5) or (b)(6) of this section;

(10) Be a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12.

(i) This provision applies in those situations where only one natural, adoptive or stepparent (regardless of marital status) is in the same food stamp household as the child.

(ii) If no natural, adoptive or stepparent is in the same food stamp household as the child, another full-time student in the same food stamp household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse.

(11) Be assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the programs identified in paragraphs (b)(11)(i) through (b)(11)(iv) of this section. Self-initiated placements during the period of time the

person is enrolled in one of these employment and training programs shall be considered to be in compliance with the requirements of the employment and training program in which the person is enrolled provided that the program has a component for enrollment in an institution of higher education and that program accepts the placement. Persons who voluntarily participate in one of these employment and training programs and are placed in an institution of higher education through or in compliance with the requirements of the program shall also qualify for the exemption. The programs are:

(i) a program under the Job Training Partnership Act of 1974 (29 U.S.C. 1501, et seq.);

(ii) an employment and training program under § 273.7;

(iii) a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296); or

(iv) an employment and training program for low-income households that is operated by a State or local government where one or more of the components of such program is at least equivalent to an acceptable food stamp employment and training program component as specified in § 273.7(f)(1). Using the criteria in § 273.7(f)(1), State agencies shall make the determinations as to whether or not the programs qualify.

(c) The enrollment status of a student shall begin on the first day of the school term of the institution of higher education. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).

(d) The income and resources of an ineligible student shall be handled as outlined in § 273.11(d).

[46 FR 43025, Aug. 25, 1981, as amended by Amdt. 235, 47 FR 55908, Dec. 14, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 277, 51 FR 30048, Aug. 22, 1986; Amdt. 370, 60 FR 48869, Sept. 21, 1995]

§ 273.6 Social security numbers.

(a) *Requirements for participation.* The State agency shall require that a household participating or applying for participation in the Food Stamp Program provide the State agency with the social security number (SSN) of each household member or apply for one before certification. If individuals have more than one number, all numbers shall be required. The State agency shall explain to applicants and participants that refusal or failure without good cause to provide an SSN will result in disqualification of the individual for whom an SSN is not obtained.

(b) *Obtaining SSNs for food stamp household members.* (1) For those individuals who provide SSNs prior to certification, recertification or at any office contact, the State agency shall record the SSN and verify it in accordance with § 273.2(f)(1)(v).

(2) For those individuals who do not have an SSN, the State agency shall:

(i) If an enumeration agreement with SSA exists, complete the application for an SSN, Form SS–5. To complete Form SS–5, the State agency must document the verification of identity, age, and citizenship or alien status as required by SSA and forward the SS–5 to SSA.

(ii) If no enumeration agreement exists, an individual must apply at the SSA, and the State agency shall arrange with SSA to be notified directly of the SSN when it is issued. The State agency shall inform the household where to apply and what information will be needed, including any which may be needed for SSA to notify the State agency of the SSN. The State agency shall advise the household member that proof of application from SSA will be required prior to certification. SSA normally uses the Receipt of Application for a Social Security Number, Form SSA–5028, as evidence that an individual has applied for an SSN. State agencies may also use their own documents for this purpose.

(3) The State agency shall follow the procedures described in paragraphs (b)(2) (i) and (ii) of this section for individuals who do not know if they have an SSN, or are unable to find their SSN.

(4) If the household is unable to provide proof of application for an SSN for a newborn, the household must provide

the SSN or proof of application at its next recertification or within 6 months following the month the baby is born, whichever is later. If the household is unable to provide an SSN or proof of application for an SSN at its next recertification within 6 months following the baby's birth, the State agency shall determine if the good cause provisions of paragraph (d) of this section are applicable.

(c) *Failure to comply.* If the State agency determines that a household member has refused or failed without good cause to provide or apply for an SSN, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification applies to the individual for whom the SSN is not provided and not to the entire household. The earned or unearned income and resources of an individual disqualified from the household for failure to comply with this requirement shall be counted as household income and resources to the extent specified in §273.11(c) of these regulations.

(d) *Determining good cause.* In determining if good cause exists for failure to comply with the requirement to apply for or provide the State agency with an SSN, the State agency shall consider information from the household member, SSA and the State agency (especially if the State agency was designated to send the SS–5 to SSA and either did not process the SS–5 or did not process it in a timely manner). Documentary evidence or collateral information that the household member has applied for an SSN or made every effort to supply SSA with the necessary information to complete an application for an SSN shall be considered good cause for not complying timely with this requirement. Good cause does not include delays due to illness, lack of transportation or temporary absences, because SSA makes provisions for mail-in applications in lieu of applying in person. If the household member can show good cause why an application for a SSN has not been completed in a timely manner, that person shall be allowed to participate for one month in addition to the month of application. If the household member applying for an SSN has been unable to obtain the documents required by SSN, the State agency caseworker should make every effort to assist the individual in obtaining these documents. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Once an application has been filed, the State agency shall permit the member to continue to participate pending notification of the State agency of the household member's SSN.

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN.

(f) *Use of SSNs.* The State agency is authorized to use SSNs in the administration of the Food Stamp Program. To the extent determined necessary by the Secretary and the Secretary of Health and Human Services, State agencies shall have access to information regarding individual Food Stamp Program applicants and participants who receive benefits under title XVI of the Social Security Act to determine such a household's eligibility to receive assistance and the amount of assistance, or to verify information related to the benefit of these households. State agencies shall use the State Data Exchange (SDX) to the maximum extent possible. The State agency should also use the SSNs to prevent duplicate participation, to facilitate mass changes in Federal benefits as described in §273.12(e)(3) and to determine the accuracy and/or reliability of information given by households. In particular, SSNs shall be used by the State agency to request and exchange information on individuals through the IEVS as specified in §272.8.

(g) *Entry of SSNs into automated data bases.* State agencies with automated food stamp data bases containing household information shall enter all SSNs obtained in accordance with §273.6(a) into these files.

[Amdt. 264, 51 FR 7206, Feb. 28, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§273.7 Work requirements.

(a) *Persons required to register.* Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment by the

State agency at the time of application, and once every twelve months after initial registration, as a condition of eligibility. The registration form need not be completed by the member required to register.

(b) *Exemptions from work registration.* (1) The following persons are exempt from the work registration requirement:

(i) A person younger than 16 years of age or a person 60 years of age or older. If a child has its 16th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption. A person age sixteen or seventeen who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time-basis is exempt.

(ii) A person physically or mentally unfit for employment. If mental or physical unfitness is claimed and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(iii) A household member subject to and complying with any work requirement under title IV of the Social Security Act, including WIN registration. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption.

(iv) A parent or other household member who is responsible for the care of a dependent child under 6 or an incapacitated person. If the child has its 6th birthday within a certification period, the individual responsible for the care of the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(v) A person is in receipt of unemployment compensation. A person who has applied for, but has not yet begun to receive, unemployment compensation shall also be exempt if that person was required to register for work with the SESA as part of the unemployment compensation application process. If the exemption claimed is questionable, the State agency shall be responsible for verifying the exemption with the appropriate office of the SESA.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) A person who is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours. This shall include migrant and seasonal farmworkers who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this shall not prevent individuals from seeking additional services from SESA). For work registration purposes, a person residing in certain designated areas of Alaska, as specified in § 274.10(a)(4)(iii), who subsistence hunts and/or fishes a minimum of 30 hours weekly as determined by averaging such activity over the certification period shall be considered exempt as self-employed.

(viii) A student enrolled at least half time in any recognized school, training program, or institution of higher education; provided that students enrolled at least half time in an institution of higher education have met the eligibility conditions in § 273.5 of this part. A student enrolled in a school, training program or institution of higher education shall remain exempt during normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer). Persons who are not enrolled at least half time or who experience a break in enrollment status due to graduation, expulsion, or suspension, or who drop out or otherwise do not intend to return to school, shall not be considered students for the purpose of qualifying for this exemption.

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or

departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change to the member's exemption status. If a work registration form is used, the State agency shall be responsible for providing the participant with a work registration form when the change is reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the participant fails to return the form, the State agency shall issue a notice of adverse action stating that the participant or, if the individual is the head of household, the household is being terminated and why, but that the termination can be avoided by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 shall register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State shall register for work each household member not exempted by the provisions of § 273.7(b). Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency shall provide a written statement of the above to each work registrant in the household. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at recertification. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State.

(2) The State agency shall be responsible for screening each work registrant to determine whether or not it is appropriate, based on the State's criteria, to refer the individual to an employment and training program, and if appropriate, referring the individual to an employment and training program component. Upon entry into each component the registrant applicant or volunteer, should be told, either orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The State agency shall initiate conciliation procedures, pursuant to paragraph (g)(1)(ii) of this section, upon determining that an individual has not complied with E&T requirements. The State agency shall issue a notice of adverse action (Form FCS–441 or equivalent State-designed form) to the individual or household, as appropriate, no later than the last day of the conciliation period. If the notice of adverse action was issued prior to the end of the conciliation period and the State agency verifies that compliance was achieved by the end of the conciliation period, the notice of adverse action may be cancelled. If States wish to use different intake and sanction systems which are compatible with title IV–A work programs such systems shall be proposed in the State agency's plan, and subject to the Secretary's approval.

(3) The State agency shall design and operate an employment and training program which may consist of one or more or a combination of employment and/or training components as described in § 273.7(f). The State agency must ensure that it is notified by the agency or agencies operating its E&T components within ten days if an E&T mandatory participant fails to comply with E&T requirements.

(4) In accordance with 7 CFR 272.2(e)(9), each State agency must prepare and submit an Employment and Training plan to its appropriate FCS Regional Office and to the FCS National Office. The plan shall be available for public inspection at the State

agency headquarters. In its plan, the State shall detail the following:

(i) The nature of the employment and training components the State plans to offer and the reasons for such components, including cost information. The methodology for State reimbursement for education components shall be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State which will request 50 percent federal reimbursement for State E & T administrative costs, other than for participant reimbursements, shall include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed. Costs in excess of the federal grant shall be allowed only with the prior approval of the Department and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information and the estimated percentage of work registrants the State plans to exempt;

(iv) The characteristics of the population the State does intend to place;

(v) The estimated number of volunteers the State expects to place in its employment and training program;

(vi) The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

(vii) The method the State will use to count all work registrants the first month of each fiscal year;

(viii) The method the State agency uses to report work registrant information and prevent work registrants from being reported twice within a Federal fiscal year on the quarterly FCS Form 583. This method must specify how work registrants are excluded if the State agency work register all food stamp applicants (i.e., universal work registration) when the applicants are exempt from work registration as specified under paragraph (b) of this section *or* if the State agency work registers nonexempt participants whenever a new application is submitted and the participants may have already been registered within the past twelve months as specified under paragraph (a) of this section. If the method the State agency uses is questionable or unacceptable, FCS reserves the right to adjust a State agency's work registrant count. FCS shall advise a State agency of how the adjusted figure was determined and shall allow the State agency 30 days to submit another method for consideration by FCS.

(ix) If a State plans to offer components which are significantly more intensive than the minimum level of effort specified in §273.7(f), or plans to concentrate its efforts on persons who may be difficult to place, due to employment obstacles, it shall be made clear in the State's employment and training plan. If, because of the nature of its components, or the population served, a State believes that an adjustment to the performance standard established in §273.7(o) is appropriate, and wishes to request a revision in the standard, it shall specify the percentage of its work registered population it intends to serve, and provide the Department with detailed information about why it has chosen to operate such a component or components, or chosen to focus on certain persons, the intended benefits to be gained by the recipient and Federal and State governments, and the number of persons it plans to serve in the component. The information provided to the Department will be used in determining whether the State's performance standard will be affected;

(x) The organizational relationship between the units responsible for certification and the units operating the employment and training components. FCS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within ten working days after such noncompliance is determined;

(xi) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services. Copies of contracts shall be available for inspection;

(xii) The availability, if appropriate, of employment and training programs to Indians living on reservations.

(xiii) Beginning with the Fiscal Year 1992 State E&T plan, the procedures developed by the State agency under paragraph (g)(1)(ii) of this section for conciliation. To the extent possible, State agencies should design conciliation procedures for the E&T program that will be compatible with the conciliation process that State agencies that administer the Aid to Families with Dependent Children (AFDC) Program will establish for the Job Opportunities and Basic Skills Training (JOBS) Program as mandated by the Family Support Act of 1988.

(xiv) The Statewide limit(s) for dependent care reimbursements as established by the State agency. The limit(s) shall not be less than the dependent care deduction amounts specified under §273.9(d)(4).

(xv) The local market rates of dependent care providers in the State. State agencies shall adopt the local market rates already established by programs under section 402(g) of the Social Security Act. State agencies shall establish separate local market rates for categories of care relevant to food stamp E&T which are not addressed under section 402(g) of the Social Security Act and include such rates in the E&T State Plan.

(5) Plans shall be submitted biennially, 45 days before the start of the fiscal year, beginning in FY 1990. States must submit plan revisions to the appropriate FCS regional office for approval if they plan to alter the nature or location of their components or the number or characteristics of persons served. The proposed changes shall be submitted for approval at least 30 days prior to planned implementation.

(6) The State shall submit quarterly reports to FCS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State from participation in an employment and training program;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component including Food Stamp Program applicants in States which operate a component for applicants;

(v) Work registrants sent a Notice of Adverse Action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component.

(7) States shall submit annually, on their first quarterly report the number of work registered persons in that State as in October of the new fiscal year.

(8) States shall submit annually, on their final quarterly report the following information:

(i) The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State agency.

(9) Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State's plan regarding the type of components offered and the characteristics of persons served.

(10) States must ensure, to the maximum extent practicable, that employment and training programs are provided for Indians living on reservations.

(11) If a benefit overissuance is discovered for a month or months in which a mandatory E & T participant has already fulfilled a work component requirement, the State agency shall follow the procedure specified in §273.22(f)(9) for a workfare overissuance.

(d) *Federal financial participation*—(1) *Employment and training grants.* (i) State agencies shall receive an employment and training program grant for each fiscal year or portion of the fiscal

year in which they operate an employment and training program. The grant shall require no State matching.

(A) Except as otherwise provided in paragraph (d)(1)(i)(D) of this section, effective in FY 1992, the nonperformance based Federal funding for employment and training grants shall be allocated on the basis of work registrants in each State agency as a percentage of work registrants nationwide. FCS will use work registrant data from the most recent Federal fiscal year. In FY 1992, each State agency shall receive an increase or decrease that is one-half of the difference between:

(*1*) An amount that is based on the percent of each State agency's caseload in FY 1990 as compared to the average monthly caseload nationwide; and

(*2*) An amount that is based on the percent of each State agency's work registrant population in FY 1990 as compared to number of work registrants nationwide.

(B) Effective in FY 1992, no State agency shall receive less tha $50,000 in nonperformance based Federal E&T funds. To ensure that no State agency receives less than $50,000 in FY 192, each State agency that is allocated more than $50,000 and would receive an increase in its E&T grant shall have its grant reduced if necessary. The reduction shall be proportionate to the number of work registrants in each State receiving more than $50,000 and receiving an increase in its E&T grant as compared to the total number of work registrants in all the States receiving more than $50,000 coupled with increases in their E&T grants. To insure that no State agency receives less than $50,000 as of FY 1993, each State agency that is allocated to receive more than $50,000 shall have its grant reduced, if necessary, proportionate to the number of work registrants in each State as compared to the total number of work registrants in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000.

(C) In Federal fiscal year 1993, the Secretary shall allocate $15 million of the Federal funds available for unmatched employment and training grants based on the ratio of the number of E&T mandatory participants placed (as defined under paragraph (o) of this section) in a food stamp E&T program in an eligible State to the number of E&T mandatory participants placed in all eligible States in Calendar Year 1991. Beginning in Federal fiscal year 1994, and each subsequent Federal fiscal year until FY 1998, the Secretary shall allocate $15 million of Federal funds on the basis of the amount of performance-based funding each State agency received in Federal fiscal year 1993, provided the State agency has met the performance standard (as defined under paragraph (o) of this section) for the second preceding Federal fiscal year. For example, to receive performance-based funding in Federal fiscal year 1996, the State agency must have met its performance standard in Federal fiscal year 1994. Corrections to reports required to be submitted in accordance with paragraph (c) of this section must be received by FCS, and State agency good cause appeals must be resolved no later than March 1, to be used in determining whether a State agency is eligible for performance-based funding for the Federal fiscal year beginning the following October. If the data on the reports show that a State agency did not meet its performance standard or a good cause determination was not made by FCS by March 1, the State agency shall not be eligible for performance-based funding. In this instance, the Secretary shall redistribute the $15 million Federal funds to eligible State agencies on the basis of Calendar Year 1991 data as prescribed under this paragraph, excluding the noncompliant States.

(D) The Secretary may adjust the level of grants during a fiscal year to take into account substantial amounts of funds for employment and training programs which are unlikely to be used by a State agency during the fiscal year and which could be productively used by another State agency or agencies, with concurrence of the State agencies involved.

(E) State agencies shall use employment and training program grants to

fund the administrative costs of planning, implementing and operating employment and training programs in accordance with approved State agency plans. Employment and training grants shall not be used for the process of determining whether a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an employment and training component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an employment and training component for assessment or participation. Employment and training grants shall also not be used to subsidize the wages of participants, or to reimburse participants under paragraph (d)(1)(ii) of this section.

(F) A State's receipt of the employment and training program grant as allocated under paragraph (d)(1)(i) (A) or (B) of this section is contingent on the Secretary's approval of the State's employment and training plan. If an adequate plan is not submitted, the Secretary may reallocate a State's grant among other States with approved plans. Non-receipt of an employment and training program grant does not release a State from performance requirements under paragraph (o) of this section or sanctions for insufficient performance.

(G) Federal funds made available to a State agency under this section to operate a component under paragraph (f)(1)(vi) of this section shall not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that employment and training component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

(ii) *Participant reimbursements.* The State agency shall provide payments to participants in its E&T program, including applicants required to perform job search and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency shall inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Any allowable costs incurred by a noncompliant E&T participant that are reasonably necessary and directly related to participation in the conciliation process shall be reimbursable under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section. The State agency may reimburse participants for expenses beyond the amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section, however, only costs which are up to but not in excess of those amounts shall be subject to Federal cost sharing. Reimbursement shall not be provided from E&T grants provided under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section shall not be deductible under § 273.10(d)(1)(i). Reimbursements shall be provided as follows:

(A) The costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest. A dependent care reimbursement shall be provided to an E&T participant for all dependents requiring dependent care unless otherwise prohibited by this section. A reimbursement shall not be provided for a dependent age 13 or older unless the dependent is physically and/or mentally

incapable of caring for himself or herself or under court supervision. A reimbursement shall be provided for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. Verification of the physical and/or mental incapacity is questionable. Also, verification of a court imposed requirement for the supervision of a dependent age 13 or older is necessary if the need for dependent care is questionable. If more than one household member is required to participate in the E&T program, the State agency shall provide reimbursement for the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving benefits under the AFDC program in a local area where an employment, training, or education program under the AFDC program is in operation, or was in operation on September 19, 1988, is not eligible for such reimbursement. An E&T participant is not entitled to the dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service, e.g., five hours per day, five days per week for two weeks. A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections, e.g., fire safety. An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency. A State agency may claim 50 percent of costs for dependent care services provided or arranged by the State agency up to the actual cost of dependent care, the local market rate, or the Statewide limit, whichever is lowest.

(B) The actual costs of transportation and other costs (excluding dependent care costs) that are determined by the State agency to be necessary and directly related to participation in the E&T program up to $25 per participant per month. Such costs shall be the actual costs of participation unless the State agency has a method approved in its State E&T plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level of reimbursements which is established by the State agency.

(C) No participant cost which has been reimbursed under a workfare program under § 273.22, title IV of the Social Security Act or other work program shall be reimbursed under this section.

(D) Any portion of dependent care costs which are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(E) The State agency shall inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are

reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section shall not be required to participate in that component. These individuals shall be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals shall be exempted from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Individuals exempted because their monthly expenses exceed the allowable reimbursable amounts specified under paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section may volunteer to participate in the E&T program. Volunteers must be informed that their allowable expenses in excess of the reimbursable amounts will not be reimbursed. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(1)(ii)(B) shall be considered in determining a dependent care deduction under 7 CFR 273.9(d)(4).

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating employment and training programs, above the costs referenced in paragraphs (d)(1)(i) of this section, shall be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under § 273.22(g) at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* Employment and training program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of the regulations. The State agency shall ensure that records are maintained which support the financial claims being made to FCS.

(3) *Fiscal recordkeeping and reporting requirements.* Total employment and training expenditures shall be reported on the Financial Status Report (SF–269) in the column containing ''other'' expenses. Employment and training expenditures shall also be separately identified in an attachment to the SF–269 to show, as provided in instructions, total State and Federal employment and training expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for employment and training costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and § 273.22 of the regulations. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program shall be submitted in accordance with § 273.22.

(e) *Work registrant requirements.* Work registrants shall:

(1) Participate in an employment and training program if assigned by the State agency;

(2) Respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (i) of this section;

(4) Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage;

(f) *Employment and training programs.* Persons required to register for work and not exempted by the State agency from placement in an employment and training program shall be subject to the requirements imposed by the State agency for that individual. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed

by the State agency shall result in disqualification as specified in § 273.7(g).

(1) *Components.* To be considered acceptable by FCS, any component offered by a State agency shall entail certain levels of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contacts; however, FCS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility worker to determine whom to place in an employment and training program does not constitute a component. An employment and training program offered by a State agency must offer one or more of the following components:

(i) A job search program comparable to that required for the AFDC program under Part A of title IV of the Social Security Act. The State may require that an individual participate in a job search program from the time an application is filed for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined) the State may require an additional job search period, not to exceed eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period. States must not impose requirements which would delay the determination of an individual's eligibility for aid or in issuing benefits to any household which is otherwise eligible.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved.

(iii) A workfare program as described in § 273.22;

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience shall:

(A) Limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development, welfare, recreation, public facilities, public safety, and day care;

(B) To the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(C) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(D) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program as specified under paragraph (f) of this section. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the

employability of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment including programs that provide instruction for self-employment ventures.

(2) *Exemptions.* Subject to the requirements for overall plan approval by the Secretary, State agencies may exempt certain work registered individuals and categories of individuals from employment and training participation. Individual exemptions shall be evaluated at each recertification and exemptions granted to categories of persons should be reviewed no less frequently than annually to determine whether they remain valid. If a State recognizes that because of changes in its caseload the exemption limit set forth in its approved plan is insufficient, the State may seek to amend its State plan during the year. FCS will consider changes in a State's caseload in determining whether a State has complied with its exemption limit.

(i) Persons who have participated in the Food Stamp Program for 30 days or less may be exempted from participation.

(ii) Categories of persons for whom an employment and training requirement would be impracticable may be exempted. Factors such as the availability of work opportunities and the cost-effectiveness of the requirements may be considered. In making the determination of exemption, the State agency may designate a category of all households residing in a specific area of the State.

(iii) State agencies may exempt from participation individual household members for whom participation is impracticable because of personal circumstances such as lack of job readiness, the remote location of work opportunities, physical condition, the unavailability of dependent care, and monthly E&T expenses that exceed the allowable reimbursable amounts specified in paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) of this section.

(iv) Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause shall be considered exempted if the reason for good cause will last for 60 days or longer. When the reason for the exemption is no longer applicable, the person may be placed in a component.

(3) *Time spent in an employment and training program.* (i) The number of months a participant spends in an employment and training component shall be determined by the State agency with the exception of the limitations placed on job search in paragraph (f)(1)(i). The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an employment and training work program including, but not limited to those carried out under § 273.7(f)(1) (iii) and (iv), combined with any hours worked that month in a workfare program under § 273.22 shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation in an E&T component for any household member individually in any month, together with any hours worked in a workfare program under § 273.22 and any hours worked for compensation (in cash or in kind), shall not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

(iii) Voluntary participants in an employment and training component shall not be disqualified for failure to comply with employment and training requirements.

(iv) The hours of participation or work of a volunteer may not exceed the

hours required of E&T mandatory participants, as specified in paragraph (f)(3) of this section.

(5) *Priority Service to Volunteers.* With prior approval from FCS, two State agencies may provide priority service to volunteers through September 30, 1995. State agencies that submit an application to provide priority service to volunteers have the flexibility to establish procedures that deviate from regulations specified under paragraph (f)(4) of this section.

(i) To be eligible for FCS approval, a State agency shall submit an application that:

(A) Describes the volunteer population it intends to serve (e.g., number served, volunteer definition, characteristics of the target group, percent of volunteer population that are mandatory work registrants under normal E&T requirements and percent that are exempt from work registration);

(B) Describes the component activities that will be offered to volunteer participants;

(C) Identifies where the volunteer program will operate (i.e., Statewide or selected counties);

(D) Specifies the duration of the volunteer program;

(E) Identifies the criteria and research design the State agency recommends to evaluate the effectiveness of the program;

(F) Provides assurances that applicants who are subject to work registration as specified under § 273.7 (a) and (b) are required to work register as a condition of eligibility;

(G) Provides assurances that the State agency will meet the established performance standards under § 273.7(o); and

(H) Provides assurances that the evaluation will be conducted by an organization separate from the administration of the State agency and that ongoing and final result of the evaluation will be provided to FCS.

(ii) State agencies which receive approval to provide priority volunteer service shall:

(A) Submit a revised E&T plan that incorporates the voluntary service provisions;

(B) Continue to report quarterly (i.e., Form FCS 583) as specified under paragraph (c)(6) of this section;

(C) Meet the performance standards as specified under § 273.7(o); and

(D) Submit data annually which show the number of volunteers who fail to complete an assigned E&T activity.

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program work regulations.* (i) If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individual shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph, and shall be considered an ineligible household member, pursuant to § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through paragraph (b) of this section, other than through the exemptions of paragraphs (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. A household determined to be ineligible due to failure to comply with the provisions of this section may reestablish eligibility if a new and eligible person joins the household as its head of household, as defined in § 273.1(d)(2). If any household member who failed to comply joins another household as head of the household as specified under §273.1(d)(1) or (d)(2), that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be ineligible for two months and shall be considered an ineligible household member pursuant to § 273.1(b)(2).

(ii) The State agency shall develop conciliation procedures to be used upon determining that an individual has refused or failed to comply with an E&T

requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E&T requirement and provide the noncomplying individual with an opportunity to comply prior to the issuance of the notice of adverse action. The conciliation period shall begin the day following the date the State agency learns of the noncompliance and shall continue for a period not to exceed 30 calendar days. Within this conciliation period, the State agency shall, at a minimum, contact the noncomplying household member to ascertain the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. If good cause does not exist, the State agency shall inform the household member of the pertinent E&T requirements and the consequences of failing to comply. The household member shall be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This date may not exceed the end of the conciliation period. To avoid the notice of adverse action, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond the household member's control, such as the unavailability of a suitable component. If it is apparent that the individual will not comply (i.e., the individual refuses to comply and does not have good cause), the State agency may end the conciliation period early and proceed with the issuance of the notice of adverse action under paragraph (g)(1)(iii) of this section. The individual's refusal to comply shall be documented in the casefile.

(iii) If the work registrant does not comply during the conciliation period the State agency shall issue a notice of adverse action to the individual or household, as specified in §273.13, no later than the last day of the conciliation period. If the notice of adverse action is issued prior to the end of the conciliation period, the notice may be cancelled if the State agency is able to verify that compliance was achieved by the end of the conciliation period.

(iv) If an individual refuses or fails to comply with any of the work requirements imposed by this section, other than the E&T requirements, the State agency shall determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. Within ten days of the State agency determining the noncompliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in §273.13.

(v) The notice of adverse action shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the ten-day adverse notice period, unless a fair hearing is requested.

(vi) Each individual or household has a right to request a fair hearing, in accordance with §273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available

through one of these means. A household shall be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.

(2) *Failure to comply with a work requirement under title IV of the Social Security Act, or unemployment compensation work requirement.* A household containing a member who was exempt from work registration in accordance with paragraph (b)(1)(iii) or (b)(1)(v) of this section because he or she was registered for work under title IV or unemployment compensation and who fails to comply with a title IV or unemployment compensation requirement comparable to a food stamp work registration or employment and training program requirement shall be treated as though the member had failed to comply with the corresponding food stamp requirements.

(i) If the State agency learns that a household member has refused or failed without good cause to comply with a title IV or unemployment compensation requirement, the State agency shall determine whether the requirement was comparable. Similarly, if the household reports the loss or denial of AFDC or unemployment compensation or if the State agency otherwise learns of such loss or denial, the State agency will determine whether the loss or denial was caused by a determination by the administering agency that a household member refused or failed without good cause to comply with the work requirement and, if so, whether the requirement was comparable to the work registration or employment and training program requirement. The title IV or unemployment compensation requirement shall not be considered comparable if it places responsibilities on the household which exceed those imposed by the food stamp work registration or FCS approved employment and training program requirements.

(ii) If the State determines that the title IV or unemployment compensation requirement is comparable, the individual or household (if the individual who committed the violation is the head of household) shall be disqualified in accordance with the following provisions. The State agency shall provide a notice of adverse action as specified in § 273.13 within 10 days after learning of the household member's noncompliance with the unemployment compensation or title IV requirement. The notice shall comply with the requirements of § 273.7(g)(1). An individual or household shall not be disqualified from participation if the noncomplying member meets one of the work registration exemptions provided in § 273.7(b) other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of that section. Household members who fail to comply with a noncomparable title IV or unemployment compensation requirement shall lose their exemption under § 273.7(b)(1)(iii) and (v), and must register for work if required to do so in § 273.7(a).

(iii) If the State agency determination of noncompliance with a comparable title IV or unemployment compensation work requirement leads to a denial or termination of the individuals or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of § 273.7(g)(1).

(iv) A disqualified individual or household may resume participation in the Program in accordance with paragraph (h) of this section.

(h) *Ending disqualification.* Following the end of the 2 month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible. Eligibility may be reestablished by a household during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the head of the household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the appropriate requirement listed in paragraph (h)(1) through (h)(5) of this section. An

individual who has been disqualified for noncompliance may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work registration or by complying with the following appropriate requirements:

(1) Refusal to register—registration by the household member.

(2) Refusal to respond to a request from the State agency or its designee requiring supplemental information regarding employment status or availability for work—compliance with the request.

(3) Refusal to report to an employer to whom referred—reporting to this employer if work is still available or to another employer to whom referred.

(4) Refusal to accept a bona fide offer of suitable employment to which referred—acceptance of the employment if still available to the participant, or securing other employment which yields earnings per week equivalent to the refused job, or securing any other employment of at least 30 hours per week or securing employment of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(5) Refusal to comply with a State agency (or its designee) assignment as part of an FCS approved employment and training program—compliance with the assignment or an alternative assignment by the State agency.

(i) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment shall be considered unsuitable if:

(i) The wage offered is less than the highest of:

(A) The applicable Federal minimum wage; (B) the applicable State minimum wage; or (C) eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (i)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(2) In addition, employment shall be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor shall employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath.

(j) *Participation of strikers.* Strikers whose households are eligible under the criteria in §273.1(g) shall be subject to the work registration requirements unless exempt under paragraph (b) of this section at the time of application.

(k) *Registration of certain PA, GA, and refugee households.* (1) State agencies may request approval from FCS to substitute State or local procedures for work registration for PA households not subject to the work requirements

under title IV of the Social Security Act or for GA households. Work requirements imposed on refugees participating in refugee resettlement programs including but not limited to the Indochinese Refugee Assistance Program may also be substituted, with FCS approval. To receive approval, it must be demonstrated that:

(i) The work registration procedures are at least equivalent to food stamp work registration requirements;

(ii) Registrants' activities are monitored so that appropriate sanctions as required by these regulations will be applied. However, if additional work requirements (beyond those required under this section) are placed on household members, a household's food stamp benefits shall not be denied for the failure of a household member to comply with a requirement that exceeds the requirements of this section. For example, if a State rule requires individuals to register for work through age 65, any individual 60 years of age or older who fails to comply shall not be denied food stamp benefits as a result of that failure;

(iii) All household members which are not exempt under paragraph (b)(1) of this section are either registered for work under such Federal, State or local programs as described in this paragraph, or are registered for work as provided in paragraph (a) of this section.

(2) Household members who are program participants under title IV of the Social Security Act or registered for work under unemployment compensation and fail to comply with comparable work requirements of those programs shall be handled in accordance with the provisions in § 273.7(g)(2).

(l) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) shall have the requirement for work registration waived until:

(1) They are determined eligible for SSI and thereby become exempt from work registration, or

(2) They are determined ineligible for SSI and where applicable, a determination of their work registration status is then made through recertification procedures in accordance with § 273.2(k)(1)(iii)(B)(*2*), or through other means.

(m) *Determining good cause.* The State agency shall be responsible for determining good cause in those instances where the work registrant has failed to comply with the work registration, employment and training, and voluntary quit requirements of this section. In determining whether or not good cause exists, the State agency shall consider the facts and circumstances, including information submitted by the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(n) *Voluntary quit.* No household whose head of household, as defined in § 273.1(d)(2), voluntarily quit a job of 20 hours a week or more without good cause 60 days or less prior to the date of application or at any time thereafter shall be eligible for participation in the program as specified below. At the time of application, the State agency shall explain to the applicant the consequences of the head of household quitting a job without good cause, and of the consequence of a person joining the household as its head if that individual has voluntarily quit employment.

(1) *Determining whether a voluntary quit occurred and application processing.* (i) When a household files an application for participation, or when a participating household reports the loss of a source of income, the State agency shall determine whether any household member voluntarily quit his or her job. Benefits shall not be delayed beyond the normal processing times specified in § 273.2 pending the outcome of this determination. This provision applies only if the employment involved 20 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was

without good cause. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this section. An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own loses the new job, the earlier quit will not form the basis of a disqualification.

(ii) In the case of an applicant household, the State agency shall determine whether any currently unemployed (i.e. employed less than 20 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 20 hours) household member who is required to register for work or who is exempt through § 273.7(b)(1)(vii) has voluntarily quit his or her job within the last 60 days. If the State agency learns that a household has lost a source of income after the date of application but before the household is certified, the State agency shall determine whether a voluntarily quit occurred.

(iii) The State agency shall determine whether any household member voluntarily quit his or her job while participating in the Program, within 60 days prior to applying for participation, or in the time between application and certification. If a household is already participating when a quit which occurred prior to certification is discovered, the household shall be regarded as a participating household and the 90 day sanction shall be imposed in accordance with § 273.7(n)(1)(vi).

(iv) If a determination of voluntary quit is established, the State agency shall then determine if the member who quit is the head of household as defined in § 273.1(d)(2).

(v) Upon the determination that the head of household voluntarily quit employment, the State agency shall determine if the voluntary quit was with good cause as defined in § 273.7(n)(3). In the case of an applicant household, if the voluntary quit was without good cause, the household's application for participation shall be denied and sanction imposed for 90 days, starting from the date of quit. The State agency shall provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice shall inform the household of the proposed period of disqualification; its right to reapply at the end of the 90 day period; and of its right to a fair hearing. In the case of participating households, benefits shall be terminated for a period of 90 days, in accordance with paragraph (n)(1)(vi) of this section.

(vi) If the State agency determines that the head of a participating household voluntarily quit his or her job while participating in the program or discovers a quit which occured within 60 days prior to application for benefits or between application and certification, the State agency shall provide the household with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit. Such notification shall contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions which may be taken to end or avoid the disqualification, and shall specify that the household may reapply at the end of the disqualification period. Except as otherwise specified in this paragraph, the period of ineligibility shall run continuously for three months or 90 days, beginning with the first of the month after all normal procedures for taking adverse action have been followed. The 90 day disqualification period may be converted to a three calendar month period only for participating households. If a voluntary quit occurs in the last month of a certification period or is determined in the last 30 days of the certification period the household shall be denied recertification for a period of 90 days beginning with the day after the last certification period ends. If such household does not apply for food

stamp benefits by the end of the certification period, a claim shall be established for the benefits received by the household for up to 90 days beginning the first of the month after the month in which the quit occurred. If there are fewer than 90 days from the first of the month after the month in which the quit occurred to the end of the certification period, a claim shall be imposed, and the household shall remain ineligible for benefits for a prorated number of days, with the end result that a claim was established or the household was ineligible for a full 90 day period. Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the head of household voluntarily quit his or her job without good cause. If the participating household's benefits are continued pending a fair hearing and the State agency determination is upheld, the disqualification period shall begin the first of the month after the hearing decision is rendered.

(vii) Persons who have been disqualified for quitting a job as head of one household will carry their sanction with them if they join a new household as its head. The new household will remain ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it in a manner prescribed in § 273.7(n)(5). If an individual who voluntarily quit joins a new household and is not the household head the sanction shall be terminated as specified under §273.1(d)(1) or (d)(2).

(viii) If an application for participation in the Program is filed in the third month of disqualification, the State agency shall in accord with § 273.10(a)(3) use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(2) *Exemptions from voluntary quit provisions.* Persons who are exempt from the work registration provisions in § 273.7(b) at the time of the quit, with the exception of those exempted by § 273.7(b)(1)(vii) shall be exempt from the voluntary quit provisions.

(3) *Good cause.* Good cause for leaving employment includes the good cause provisions found in § 273.7(m), and resigning from a job that does not meet the suitability criteria specified in § 273.7(i). Good cause for leaving employment shall also include:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance by the head of household of employment, or enrollment of at least half-time in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the household to move and thereby requires the head of household to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment which becomes unsuitable by not meeting the criteria specified in § 273.7(i) after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 20 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 20 hours which, because of circumstances beyond the control of the primary wage earner, subsequently either does not materialize or results in employment of less than 20 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 20 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available

at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment shall be considered as with good cause if part of the pattern of that type of employment.

(4) *Verification.* (i) To the extent that the information given by the household is questionable, as defined in § 273.2(f)(2), State agencies shall request verification of the household's statements. The primary responsibility for providing verification as provided in § 273.2(f)(5) rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the State agency shall offer assistance to the household to obtain the needed verification. Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives and grievance committees or organizations. Whenever documentary evidence cannot be obtained, the State agency shall substitute a collateral contact. The State agency is responsible for obtaining verification from acceptable collateral contacts provided by the household.

(ii) If the household and State agency are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Program.

(5) *Ending a voluntary quit disqualification.* (i) Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit, or leaves the household. Comparable employment may entail fewer hours or a lower net salary than the job which was quit. Eligibility may also be reestablished if the violator becomes exempt from the work registration requirements through § 273.7(b) other than paragraphs (b)(1)(iii) or (b)(1)(v) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the balance of the period of ineligibility.

(iii) A household determined ineligible due to a voluntary quit without good cause may reestablish eligibility if a new and otherwise eligible member joins as its head of household as defined by § 273.1(d)(2).

(o) *Performance standards.* The Secretary shall establish an annual performance standard for the minimum number of eligible persons that States must place in employment and training programs.

(1) *Performance formula.* To ascertain a State's level of performance at the end of each fiscal year, FCS will divide the number of E&T mandatory participants plus volunteers the State has ''placed'' in its E&T program over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the ''base of eligibles.''

(2) *Counting placements in an employment and training program.* State agencies may consider a person placed in an E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a Notice of Adverse Action for the noncompliance. NOAAs sent for noncompliance with work registration optional workfare or voluntary quit shall not count as placements. Assigned persons who have good cause for noncompliance shall not be counted as placed. If the good cause for the noncompliance is temporary (less

than 60 days), the person shall be referred again to a component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt by the State agency. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only. Each time a participant is placed in a different component after having completed a prior component, he/she may be counted as placed. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed more than once in the same component. If an E&T mandatory participant does not comply with E&T requirements, and a Notice of Adverse Action is sent, the person is counted as placed in the month the NOAA is mailed.

(3) *Counting the ''base of eligibles''.* The base of persons eligible to participate in an E&T program (the denominator) consists of all nonexempt work registrants in the month of October plus newly work registered food stamp recipients who have not been exempted by the State under § 273.7(f)(2) of these regulations from participation in an E&T program, and food stamp program applicants who are assigned by the State to enter an E&T component at the time of application and are subsequently certified for food stamp participation. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. State agencies need not count any individual in the base of eligibles more than once in a fiscal year. For purposes of computing the base of eligibles for the two performance standard reporting periods of Fiscal Year 1989 (first quarter and the remaining three quarters) the first quarter base of eligibles is the cumulative total of 25 percent of the number of E&T mandatory participants in the State in October 1988 (including persons in work registrant status carried over from the previous fiscal year), plus new E&T mandatory participants registered during November and December 1988, plus volunteers placed in E&T components during the quarter. The second performance period base of eligibles is the total of 75 percent of the October 1988 count of E&T mandatory participants plus new E&T mandatory participants registered during the months of January through September 1989, plus volunteers placed in E&T components during these same nine months.

(4) *Applicant participation.* Some States may wish to operate a job search or other component which begins at the time of Food Stamp Program application. The applicants who are placed in this component (who either perform the job search or who do not and are denied eligibility for failure to comply with the E&T requirement) should be counted as ''placed''. These persons need be counted in the base of eligibles, or the denominator, only if their application is approved, they are certified for food stamp benefits and they are work registered. At that time, they should be counted as ''newly work registered'' if they have not been counted in this category in the previous 12 months. If an applicant performs a job search and is either denied eligibility, for causes other than non-compliance with the E&T requirements, or certified but exempted from work registration, the individual need not be counted in the base of eligibles.

(5) *Accounting for short-term participants.* There are a number of work registrants considered E&T mandatory who are counted in the base of eligibles but who remain on the Food Stamp Program for such a short period of time States are unable to place them in an E&T component. These short term recipients inflate the State's base of eligibles and make it more difficult for States to meet their performance standard. States may choose one of two methods to counteract the effects of short term participants.

(i) States may exempt from E&T participation persons who will leave the Food Stamp Program within 30 days of application. This may mean that States will not attempt to serve such persons unless they volunteer for E&T participation. States must count each individual as having been exempted under the reporting requirements of § 273.7(c)(6)(ii).

(ii) States may, at the close of the fiscal year, subtract 10 percent from their base of eligibles (denominator) to account for E&T mandatory participants who have left the program within 30 days of application. This 10 percent adjustment may be made without supporting documentation. Since the short term mandatory participants are not exempted from participation, States may attempt to place them in a component and may count them as placed (in their numerator) if they meet the placement criteria of paragraph (o)(2) of this section. For Fiscal Year 1989, this 10 percent adjustment may be applied to the base of eligible totals for each reporting period resulting from the computations specified in paragraph (o)(3) of this section.

(6) *Performance data collection.* To determine the annual total in the base of eligibles (denominator), State agencies shall count the number of E&T mandatory participants (non-exempt work registrants) in the State during the month of October, including persons in that status who were work registered the prior year. The number of newly work registered E&T mandatory participants for each subsequent month should be added to the October count. Volunteers placed in components shall be added for each month of the fiscal year. Separate counts shall be maintained for E&T mandatory participants and volunteers. To determine the number of persons ''placed'' in an E&T program (numerator), the State agency shall count and add cumulatively every month non-exempt work registrants and volunteers who were ''placed'' in a component, as defined in paragraph (o)(2) of this section.

(7) *Percentage of persons to be placed.* Beginning in Fiscal Year 1992, 10 percent of the number of mandatory E&T participants, plus volunteers who participated, shall be placed in an E&T Program. This performance standard shall remain in effect through Fiscal Year 1995.

(8) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State agency if the State agency can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require significantly higher levels of service. If a State proposes that its performance standard be adjusted, it should propose the amount of the requested adjustment and provide a justification. The additional documentation called for in § 273.7(c) must be submitted to FCS in the State's employment and training plan. In determining whether an adjustment of the performance standard is warranted and the level of the adjustment, FCS will consider the number of persons who will be placed, the percentage of planned placements compared to the State's E&T mandatory population, the intensity and effectiveness of the components, and the cost.

(ii) Only in extraordinary circumstances should a State expect to have a performance standard approved which is lower than 40 percent of the nationwide standard.

(p) *State noncompliance with Employment and Training requirements.* (1) If a State agency fails to efficiently and effectively administer its employment and training program, the provisions of § 276.1(a)(3) shall apply.

(2) If a State has failed to meet its established performance standard, FCS shall determine whether there was good cause for the noncompliance. Good cause for State noncompliance is specified in § 276.6. In determining whether a State agency has met a performance standard, the Secretary will also consider factors such as the extent to which volunteers have participated in the employment and training program, placements in unsubsidized employment, increases in earnings and the reduction in the number of persons participating in the Food Stamp Program, and changes in the States caseload, if the State supplies the Agency with appropriate documentation. Lack of E & T funding at the 100 percent Federal level shall not constitute good cause.

(3) If the Agency finds that there was not sufficient good cause for the State's failure to meet its performance standards the Agency may disallow administrative funds. The dollar amount of the funds disallowed shall be calculated by reducing the amount of the State's 100 percent Federal employment and training allocation for the

pertinent year proportionately to the percentage below its standard the State's performance fell. This amount shall then be disallowed from the State's administrative funds as specified in § 276.4(c) except that no formal warning is required. The Secretary may withhold a larger percentage of the allocation depending on the severity of the noncompliance. Appeal and administrative review provisions of § 276.1(b), shall apply.

(4) In addition to the disallowance described in paragraph (p)(2) of this section, a State agency shall not receive performance-based funding for a given fiscal year in accordance with paragraph (d)(1)(i)(B) of this section, if the State agency does not meet its performance standard (as establish prospectively) for the second preceding fiscal year.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.7, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.8 Resource eligibility standards.

(a) *Uniform standards.* The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. Households which are categorically eligible as defined in § 273.2(j)(2) or 273.2(j)(4) do not have to meet the resource limits or definitions in this section.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $2,000 for the household, except that, for households including a member or members age 60 or over, such resources shall not exceed $3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8), funds held in individual retirement accounts (IRA's), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members. In counting resources of households with IRA's or includable Keogh plans, the State agency shall include the total cash value of the account or plan minus the amount of the penalty (if any) that would be exacted for the early withdrawal of the entire amount in the account or plan; and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (h) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(3) For households containing sponsored aliens (as defined in § 273.11(j)(1)), resources shall also include that portion of the resources of an alien's sponsor and the sponsor's spouse (if living with the sponsor) which have been deemed to be those of the alien in accordance with the procedures established in § 273.11(j), unless the sponsored alien is otherwise exempt from this provision in accordance with § 273.11(j).

(d) *Jointly owned resources.* Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For the purpose of this provision, ineligible aliens or disqualified individuals residing with the household

shall be considered household members. Resources shall be considered inaccessible to persons residing in shelters for battered women and children, as defined in §271.2, if

(1) The resources are jointly owned by such persons and by members of their former household; and

(2) The shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or uninhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed $1,500 in equity value, in which event the value above $1,500 is counted. The cash value of pension plans or funds shall be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) shall not be excluded under this paragraph.

(3) Licensed vehicles shall be excluded as specified in paragraph (h) of this section. The exclusion also includes unlicensed vehicles on those Indian reservations that do not require vehicles driven by tribal members to be licensed.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis. Such property shall include rental homes and vacation homes.

(5) Property, such as farm land or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member. Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available

to the household, shall be considered inaccessible to the household if:

(i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;

(ii) The trustee administering the funds is either:

(A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;

(iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or (B) established from nonhousehold funds by a nonhousehold member.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income is explained in § 273.10(c) and the treatment of self-employment income is explained in § 273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of some of the resources excluded by Federal statute:

(i) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a)) or the Sac and Fox Indian claims agreement (Pub. L. 94–189);

(ii) Payments received by certain Indian tribal members under Pub. L. 94–114, section 6, regarding submarginal land held in trust by the United States;

(iii) Benefits received from the special supplemental food program for women, infants and children (WIC) (Pub. L. 92–443, section 9);

(iv) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216);

(v) Earned income tax credits received before January 1, 1980, as a result of Pub. L. 95–600, the Revenue Act of 1978.

(vi) Payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

(vii) Payments received by the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Pub. L. 95–433, section 2.

(viii) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5).

(ix) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

(12) Earned income tax credits shall be excluded as follows:

(i) A Federal earned income tax credit received either as a lump sum or as payments under section 3507 of the Internal Revenue Code for the month of receipt and the following month for the individual and that individual's spouse.

(ii) Any Federal, State or local earned income tax credit received by any household member shall be excluded for 12 months, provided the household was participating in the Food Stamp Program at the time of receipt of the earned income tax credit and provided the household participates continuously during that 12-month period. Breaks in participation of one month or less due to administrative reasons, such as delayed recertification or missing or late monthly reports, shall not be considered as nonparticipation in determining the 12-month exclusion.

(13) Where an exclusion applies because of use of a resource by or for a household member, the exclusion shall also apply when the resource is being used by or for an ineligible alien or disqualified person whose resources are being counted as part of the household's resources. For example, work related equipment essential to the employment of an ineligible alien or disqualified person shall be excluded (in accordance with paragraph (e)(5) of this section), as shall one burial plot per ineligible alien or disqualified household member (in accordance with paragraph (e)(2) of this section).

(14) Energy assistance payments or allowances excluded as income under § 273.9(c)(11).

(15) Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

(16) Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under paragraphs (h)(1)(i), (h)(1)(ii) or (h)(1)(v) of this section. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(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 because 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. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments, or to vehicles. The determination of whether any part of the value of a vehicle is included as a resource shall be handled using 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:

(i) *Significant return* shall be any return, after estimated costs of sale or disposition, and taking into account the ownership interest of the household, that is estimated to be one half or more of the applicable resource limit for the household; and

(ii) *Any significant amount of funds* shall be funds amounting to one half or more of the applicable resource limit for the household.

(f) *Handling of excluded funds.* Excluded funds that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. The resources of students and self-employment households which are excluded as provided in paragraph (e)(9) of this section and are commingled in an account with nonexcluded funds shall retain their exclusion for the period of time over which they have been prorated as income. All other excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for six months from the date they are commingled. After six months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(g) *Fair market value of licensed vehicles.* The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance

to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as ''blue books.'' The State agency shall insure that the blue book used to determine the value of licensed vehicles has been updated within the last 6 months. The National Automobile Dealers Association's (NADA) Used Car Guide Book is a commonly available and frequently updated publication. The State agency shall assign the wholesale value to vehicles. If the term ''wholesale value'' is not used in a particular blue book, the State agency shall assign the listed value which is comparable to the wholesale value. The State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment. A household may indicate that for some reason, such as body damage or inoperability, a vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source. Also, households shall be asked to acquire verification of the value of licensed antique, custom made, or classic vehicles, if the State agency is unable to make an accurate appraisal. If a vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle. The blue book value shall be assigned as if the vehicle were not so equipped. If a vehicle is no longer listed in the blue book, the household's estimate of the value of the vehicle shall be accepted, unless the State agency has reason to believe the estimate is incorrect. In that case, and if it appears that the vehicle's value will affect eligibility, the household shall obtain an appraisal or produce other evidence of its value, such as a tax assessment or a newspaper advertisement which indicates the amount for which like vehicles are being sold. If a new vehicle is not yet listed in the blue book, the State agency shall determine the wholesale value through some other means (e.g., contacting a car dealer which sells that make of vehicle).

(h) *Handling of licensed vehicles.* The value of licensed vehicles shall be excluded or counted as a resource as follows:

(1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(i) Used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat. Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming;

(ii) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(iii) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household), for example, the vehicle of a traveling sales person or a migrant farmworker following the work stream.

(iv) Used as the household's home and, therefore, excluded under paragraph (e)(1) of this section; or

(v) Necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled household member). A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is specially equipped to meet the specific needs of the disabled person or if the vehicle is a special type of vehicle that makes it possible to transport the disabled person. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member; or

(vi) Necessary to carry fuel for heating or water for home use when such

transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households shall receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households shall not be required to furnish documentation, as mandated by § 273.2(f)(4), unless the exclusion of the vehicle is questionable. If the basis for exclusion of the vehicle is questionable, the State agency may require documentation from the household, in accordance with § 273.2(f)(4).

(2) The exclusion in paragraphs (h)(1)(i) through (iv) of this section will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(3) Each licensed vehicle not excluded under paragraph (h)(1) of this section shall be evaluated individually to determine its fair market value resource exclusion limit, and that portion of the resource exclusion limit which exceeds $4,500 for FY 1993, shall be attributed in full toward the household's resource level regardless of any encumbrances. The $4,500 fair market value resource exclusion limit for licensed vehicles shall remain in effect through August 31, 1994. On September 1, 1994 through September 30, 1995, the fair market value resource exclusion limit shall be increased to $4,550. On October 1, 1995 through September 30, 1996, the fair market value resource exclusion limit shall be increased to $4,600. On October 1, 1996 and each October 1 thereafter, using a base of $5,000, the fair market value resource exclusion limit for licensed vehicles shall be adjusted to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50. Any value in excess of the appropriate fair market value resource exclusion limit shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicle. For example, in November 1994 a household owning an automobile with a fair market value of $5,550 shall have $1,000 applied toward its resource exclusion level. Any value in excess of $4,550 (the fair market value resource exclusion limit for that time period) shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market value resource exclusion limit of two or more vehicles shall not be added together to reach a total fair market value resource exclusion in excess of the fair market value resource exclusion for the appropriate time period.

(4) Licensed vehicles shall also be evaluated for their equity value, except for:

(i) Vehicles excluded in paragraph (h)(1) of this section; (ii) one licensed vehicle per household, regardless of the use of the vehicle; and (iii) any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to household) to and from employment, or to and from training or education which is preparatory to employment, or to seek employment in compliance with the employment and training criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e)(3), (4), or (5) of this section, shall be attributed toward the household's resource level.

(5) In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value is $5,000 and the equity value is $1,000 the household shall be credited with only the $1,000 equity

value, and the $500 excess fair market value will not be counted.

(6) In summary, each licensed vehicle shall be handled as follows: First, the vehicle shall be evaluated to determine if it is an income producer, a home, necessary to transport a disabled household member, or necessary to carry fuel for heating or water for home use. If not exempt, it will be evaluated to determine if its fair market value exceeds $4,500. If worth more than $4,500, the portion in excess of $4,500 for each vehicle will be counted as a resource. The vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than $4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

(i) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers:

(i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personal property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits;

(ii) Resources which are sold or traded at, or near, fair market value;

(iii) Resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household); and

(iv) Resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. The following chart will be used to determine the period of disqualification.

Amount in excess of the resource limit	Period of disqualification (months)
$0 to 249.99	1
250 to 999.99	3
1,000 to 2999.99	6
3,000 to 4,999.99	9
5,000 or more	12

(j) *Resources of nonhousehold members.* (1) The resources of nonhousehold members, as defined in §273.1(b)(1), shall be handled as outlined in §273.11(d).

(2) The resources of nonhousehold members, as defined in §273.1(b)(2), shall be handled as outlined in §273.11(c) and (d), as appropriate.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.8, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligiblity standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in §273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(1) The gross income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be 130 percent of the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be 130 percent of the Federal income poverty levels for Alaska.

(iii) The income eligibility standards for Hawaii shall be 130 percent of the Federal income poverty levels for Hawaii.

(2) The net income eligibility standards for the Food Stamp Program shall be as follows:

(i) The income eligibility standards for the 48 contiguous States and the District of Columbia, Guam and the Virgin Islands shall be the Federal income poverty levels for the 48 contiguous States and the District of Columbia.

(ii) The income eligibility standards for Alaska shall be the Federal income poverty levels for Alaska.

(iii) The income eligibility standard for Hawaii shall be the Federal income poverty levels for Hawaii.

(3) The income eligibility limits, as described in this paragraph, are revised each October 1 to reflect the annual adjustment to the Federal income poverty guidelines for the 48 States and the District of Columbia, for Alaska, and for Hawaii.

(i) 130 percent of the annual income poverty guidelines shall be divided by 12 to determine the monthly gross income standards, rounding the results upwards as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is multiplied by 130 percent, divided by 12, and the results rounded upward if necessary.

(ii) The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the increment in the Federal income poverty guidelines is divided by 12, and the results rounded upward if necessary.

(4) The monthly gross and net income eligibility standards for all areas will be prescribed in General Notices published in the FEDERAL REGISTER.

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include: (i) All wages and salaries of an employee.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of

this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder, except foster care boarders, shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program, to the extent they are not a reimbursement. Training allowances under Job Training Partnership Act, other than earnings as specified in paragraph (b)(1)(v) of this section, are excluded from consideration as income.

(iv) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93–113 Stat., as amended) shall be considered earned income and subject to the earned income deduction prescribed in § 273.10(e)(1)(i)(B), excluding payments made to those households specified in paragraph (c)(10)(iii) of this section.

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(5), title II, of the Job Training Partnership 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 Job Training Partnership Act and monies paid by the employer.

(vi) Educational assistance which has a work requirement (such as work study, an assistantship or fellowship with a work requirement) in excess of the amount excluded under § 273.9(c)(3).

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs (as defined in § 271.2); or other assistance programs based on need. Such assistance is considered to be unearned income even if provided in the form of a vendor payment (provided to a third party on behalf of the household), unless the vendor payment is specifically exempt from consideration as countable income under the provisions of paragraph (c)(1) of this section. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered unearned income.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation including any amounts deducted to repay claims for intentional program violations as provided in § 272.12; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults who are considered members of the household; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, deferred payment loans for education, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(vi) Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of paragraph (c) of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt

under the provisions of paragraph (c) of this section.

(3) The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with §273.16, or as a result of a sanction imposed while he/she was participating in a household disqualified for failure to comply with workfare requirements, in accordance with §273.22, shall continue to be attributed in their entirety to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN, in accordance with §273.6, or for being an ineligible alien, in accordance with §273.4, shall continue to be counted as income, less a pro rata share for the individual. Procedures for calculating this pro rata share are described in §273.11(c).

(4) For households containing sponsored aliens (as defined in §273.11(j)(1)), unearned income shall also include that amount of the monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as unearned income in accordance with the procedures established in §273.11(j), unless the sponsored alien is otherwise exempt from this provision in accordance with §273.11(j). Actual money paid to the alien by the sponsor or the sponsor's spouse would not be considered income to the alien unless the amount paid exceeds the amount attributed. The amount paid that actually exceeds the amount attributed would be considered income to the alien in addition to the amount attributed to the alien.

(5) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section. However, moneys withheld from assistance from another program, as specified in §273.11(k), shall be included as income.

(ii) Child support payments received by AFDC recipients which must be transferred to the agency administering title IV–D of the Social Security Act, as amended, to maintain AFDC eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and include meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. Payments made to a third party on behalf of the household are included or excluded as income as follows:

(i) *Public assistance (PA) vendor payments.* PA vendor payments are counted as income unless they are made for:

(A) Medical assistance;

(B) Child care assistance;

(C) Energy assistance as defined in paragraph (c)(11) of this section;

(D) Emergency assistance (including, but not limited to housing and transportation payments) for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance payments for households living in transitional housing for the homeless;

(F) Emergency and special assistance. PA provided to a third party on behalf of a household which is not specifically excluded from consideration as income under the provisions of paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section shall be considered for exclusion under this provision. To be considered emergency or special assistance and excluded under this provision, the assistance must be provided over and above the normal PA grant or payment, or cannot normally be provided as part of such grant or payment. If the PA program is composed of various

standards or components, the assistance would be considered over and above the normal grant or not part of the grant if the assistance is not included as a regular component of the PA grant or benefit or the amount of assistance exceeds the maximum rate of payment for the relevant component. If the PA program is not composed of various standards or components but is designed to provide a basic monthly grant or payment for all eligible households and provides a larger basic grant amount for all households in a particular category, e.g., all households with infants, the larger amount is still part of the normal grant or benefit for such households and not an ''extra'' payment excluded under this provision. On the other hand, if a fire destroyed a household item and a PA program provides an emergency amount paid directly to a store to purchase a replacement, such a payment is excluded under this provision. If the PA program is not composed of various standards, allowances, or components but is simply designed to provide assistance on an as-needed basis rather than to provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision because the assistance is not provided over and above the normal grant, it is the normal grant. If it is not clear whether a certain type of PA vendor payment is covered under this provision, the State agency shall apply to the appropriate FCS Regional Office for a determination of whether the PA vendor payments should be excluded. The application for this exclusion determination must explain the emergency or special nature of the vendor payment, the exact type of assistance it is intended to provide, who is eligible for the assistance, how the assistance is paid, and how the vendor payment fits into the overall PA benefit standard. A copy of the rules, ordinances, or statutes which create and authorize the program shall accompany the application request.

(ii) *General assistance (GA) vendor payments.* Vendor payments made under a State or local GA program or a comparable basic assistance program are excluded from income except for some vendor payments for housing. A housing vendor payment is counted as income unless the payment is for:

(A) Assistance provided for utility costs;

(B) Energy assistance (as defined in paragraph (c)(11) of this section);

(C) Housing assistance from a State or local housing authority;

(D) Emergency assistance for migrant or seasonal farmworker households while they are in the job stream;

(E) Housing assistance for households living in transitional housing for the homeless;

(F) Emergency or special payments (as defined in paragraph (c)(1)(i)(F) of this section; or

(G) Assistance provided under a program in a State in which no GA payments may be made directly to the household in the form of cash.

(iii) *Department of Housing and Urban Development (HUD) vendor payments.* Rent or mortgage payments made to landlords or mortgagees by HUD are excluded.

(iv) *Educational assistance vendor payments.* Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance payable directly to the household.

(v) *Vendor payments that are reimbursements.* Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household in accordance with paragraph (c)(5) of this section.

(vi) *Demonstration project vendor payments.* In-kind or vendor payments which would normally be excluded as income but are converted in whole or in part to a direct cash payment under a federally authorized demonstration project or waiver of provisions of Federal law shall be excluded from income.

(vii) *Other third-party payments.* Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the

household, the payment shall be excluded from income. This distinction is illustrated by the following examples:

(A) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

(B) A household member earns wages. However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

(C) A household receives court-ordered monthly support payments in the amount of $400. Later, $200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household. For example, a court awards support payments in the amount of $400 a month and in addition orders $200 to be paid directly to a bank for repayment of a loan. The $400 payment is counted as income and the $200 payment is excluded from income. Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(3)(i) Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

(ii) To be excluded, educational assistance referred to in paragraph (c)(3)(i) must be:

(A) Awarded to a household member enrolled at a:

(*1*) Recognized institution of post-secondary education (meaning any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the State in which the institution is located, provided that the institution is legally authorized or recognized by the State to provide an educational program beyond secondary education in the State or provides a program of training to prepare students for gainful employment, including correspondence schools at that level),

(*2*) School for the handicapped,

(*3*) Vocational education program,

(*4*) Vocational or technical school,

(*5*) Program that provides for obtaining a secondary school diploma or the equivalent;

(B) Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

(*1*) Tuition,

(*2*) Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,

(*3*) Books,

(*4*) Supplies,

(*5*) Transportation,

(*6*) Miscellaneous personal expenses, other than normal living expenses, of the student incidental to attending a school, institution or program,

(*7*) Dependent care,

(*8*) Origination fees and insurance premiums on educational loans,

(*9*) Normal living expenses which are room and board are not excludable.

(*10*) Amounts excluded for dependent care costs shall not also be excluded under the general exclusion provisions

of paragraph § 273.9(c)(5)(i)(C). Dependent care costs which exceed the amount excludable from income shall be deducted from income in accordance with paragraph § 273.9(d)(4) and be subject to a cap.

(iii) Exclusions based on use pursuant to paragraph (c)(3)(ii)(B) must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expense are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income to the extent possible. If the unearned educational income is not enough to cover the expense, the remainder of the allowable expense shall be excluded from earned educational income.

(iv) An individual's total educational income exclusions granted under the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section cannot exceed that individual's total educational income which was subject to the provisions of paragraph (c)(3)(i) through (c)(3)(iii) of this section.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded pursuant to the provisions of § 273.9(c)(3)(i). A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive.

(i) Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(A) Reimbursements or flat allowances, including reimbursements made to the household under § 273.7(d)(1)(ii), for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(B) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(C) Medical or dependent care reimbursements.

(D) Reimbursements received by households to pay for services provided by Title XX of the Social Security Act.

(E) Any allowance a State agency provides no more frequently than annually for children's clothes when the children enter or return to school or daycare, provided the State agency does not reduce the monthly AFDC payment for the month in which the school clothes allowance is provided. State agencies are not required to verify attendance at school or daycare.

(F) Reimbursements made to the household under § 273.7(d)(1)(ii) for expenses necessary for participation in an education component under the E&T program.

(ii) The following shall not be considered a reimbursement excludable under this provision:

(A) No portion of benefits provided under title IV–A of the Social Security Act, to the extent such benefits are attributed to an adjustment for work-related or child care expenses (except for payments or reimbursements for such expenses made under an employment, education or training program initiated under such title after September 19, 1988), shall be considered excludable under this provision.

(B) No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this provision.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of any household member who is under age 22, who is an elementary or secondary school student, and who lives with a natural, adoptive, or stepparent or under the parental control of a household member other than a parent. For purposes of this provision, an elementary or secondary school student is someone who attends elementary or secondary school, or who attends classes to obtain a General Equivalency Diploma that are recognized, operated, or supervised by the student's state or local school district, or who attends elementary or secondary classes through a home-school program recognized or supervised by the student's state or local school district. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. These payments shall be counted as resources in the month received, in accordance with §273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in §273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92–203, section 21(a));

(iii) Any payment to volunteers under Title II (RSVP, Foster Grandparents and others) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93–113) as amended. Payments under title I of that Act (including payments from such title I programs as VISTA, University Year for Action, and Urban Crime Prevention Program) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined the title I program, except that households which were receiving an income exclusion for a Vista or other title I Subsistence allowance at the time of conversion to the Food Stamp Act of 1977

shall continue to receive an income exclusion for VISTA for the length of their volunteer contract in effect at the time of conversion. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made. New applicants who were not receiving public assistance or food stamps at the time they joined VISTA shall have these volunteer payments included as earned income. The FCS National Office shall keep FCS Regional Offices informed of any new programs created under title I and II or changes in programs mentioned above so that they may alert State agencies.

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94–114, section 6).

(v) Allowances, earnings, or payments (including reimbursements) to individuals participating in programs under the Job Training Partnership Act (Pub. L. 90–300), except as provided for under paragraph (b)(1)(v) of this section.

(vi) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94–540).

(vii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

(viii) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Pub. L. 95–433).

(ix) Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, section 5).

(x) Payments of relocation assistance to members of the Navajo and Hopi Tribes under Pub. L. 93–531.

(11) Payments or allowances made for the purpose of providing energy assistance under any Federal law, including utility reimbursements made by the Department of Housing and Urban Development and the Farmers Home Administration. In addition, any payments or allowances, including tax credits, under State or local law which are so designated and made for the purpose of providing energy assistance shall be excluded from consideration as income, provided that FCS has approved the exclusion of such payments or allowances. Notification of FCS approval will contain a specific date on which it becomes effective, but in no case will that date be later than 30 days following FCS notification to the State agency. The payments shall include but not be limited to assistance which is combined in a single payment with public assistance (PA) or general assistance (GA). The State agency shall submit documentation to FCS to show that the State or local energy assistance to be excluded meets the purpose designation as follows:

(i) The State or local payments or allowances are made for the purpose of providing energy assistance to households. Some indicators of purpose are:

(A) The energy assistance is not limited to households which receive PA or GA;

(B) The energy assistance is provided only to households which actually incur home energy costs;

(C) If the energy assistance payments are made separately or combined with other assistance payments, such as PA or GA, the energy assistance results in an increase in total assistance to the household (not counting food stamps) when compared to the assistance level as of the first day of the State or local legislative session during which the energy assistance is authorized or increased;

(D) The energy assistance is based on studies, surveys, or reports evaluating home energy costs. The energy assistance levels should be directly tied to the findings of such studies, surveys, or reports; and

(E) The energy assistance payments are designated as such by the legislative body enacting them;

(ii) The payments or allowances are clearly designated, (A) in State or local law, or (B) in documentation supporting or accompanying the statute, as energy assistance, distinct from other assistance. If the designation is contained only in supporting documentation it must clearly reflect the intent of both chambers of a bicameral legislature or the intent of a majority of members of a town council or county board. Documentation that would show

a majority intent of an enacting body could take the form of a legislative resolution, the preamble and body of county regulations, county or town ordinances, or similar measures that represent the wishes of an entire legislative body; and

(iii) The levels of State or local energy assistance payments or allowances are calculated based on the seasonal home energy needs of typical households over an aggregate period not exceeding six months per year. If the State or local energy assistance is actually provided over a period longer than this aggregate, then the State agency shall document the reasons why it is administratively infeasible or impracticable to provide the energy assistance within the aggregate period on which it is based. If the legislation enacting the energy assistance program requires calculation of the energy assistance payments on the basis of only *increased* seasonal home energy needs, such payments may be excluded.

(12) At State agency option, the State agency may exclude from unearned income, up to $50 monthly of title IV–D child support payments in cases where such payments are received by households from the title IV–D support agency responsible for collecting such child support payments on behalf of AFDC recipients. The exclusion must be uniformly applied to all affected households.

(13) Cash donations based on need received on or after February 1, 1988 from one or more private nonprofit charitable organizations, but not to exceed $300 in a Federal fiscal year quarter.

(14) Earned income tax credit payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(15) Any payment made to an E&T participant under § 273.7(d)(1)(ii) for costs that are reasonably necessary and directly related to participation in the E&T program. These costs include, but are not limited to, dependent care costs, transportation, other expenses related to work, training or education, such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs shall not include the cost of meals away from home. Also, the value of any dependent care services provided for or arranged under § 273.7(d)(1)(ii)(A) would be excluded.

(16) Governmental foster care payments received by households with foster care individuals who are considered to be boarders in accordance with § 273.1(c).

(17) Income of an SSI recipient necessary for the fulfillment of a plan for achieving self-support (PASS) which has been approved under section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act. This income may be spent in accordance with an approved PASS or deposited into a PASS savings account for future use.

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction.* The per household per month standard deduction amounts applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REGISTER.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction.

(3) *Excess medical deduction.* That portion of medical expenses in excess of $35 per month, excluding special diets, incurred by any household member who is elderly or disabled as defined in § 271.2. Spouses or other persons receiving benfits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:

(i) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner

authorized by State law or other qualified health professional.

(ii) Hospitalization or outpatient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State.

(iii) Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment are deductible;

(iv) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlements for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible;

(v) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend down expenses incurred by Medicaid recipients;

(vi) Dentures, hearing aids, and prosthetics;

(vii) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(viii) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(ix) Reasonable cost of transportation and lodging to obtain medical treatment or services;

(x) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition, an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The State agency is only required to update the allotment amount at the next scheduled recertification; however, at their option, the State agency may do so earlier. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the State agency shall treat the cost as a medical expense.

(4) *Dependent care.* Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(f), or attend training or pursue education which is preparatory to employment, except as provided in § 273.10(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is $200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent.

(5) *Shelter costs*—(i) *Homeless households.* State agencies shall 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. If State agencies opt to develop their own estimate, the estimate must be consistent with costs incurred by homeless people for shelter and the methodology and database used in developing the State estimate shall be submitted to FCS for approval. If a State agency finds that area shelter costs differ by geographic areas, the State agency may develop specific estimates by geographic areas. If a State agency submits data that show shelter costs for most homeless households are higher than the FCS shelter estimate, the higher shelter estimate shall be used. If State agencies do not wish to develop their own estimate, then the State agency shall use the estimate provided by the Department. The Department's shelter estimate for FY 92 is $128. The Department will update this figure annually when the shelter cap is adjusted using the same method as is used in indexing the shelter cap. All homeless households which incur or reasonably expect to incur shelter costs during a month shall be eligible for the estimate unless higher shelter costs are verified in accordance with § 273.2(f)(1)(xi) of this chapter at which point, the household may use actual shelter costs rather

than the estimate. Homeless households which incur no shelter costs during the month shall *not* be eligible for the standard estimate.

(ii) *Household shelter deduction.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1), (2), (3) and (4) of this section have been allowed. The shelter deduction shall not exceed the maximum limit established for the area. This is applicable unless the household contains a member who is elderly or disabled as defined in § 271.2. Such households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. The shelter deduction amount applicable for use in the 48 contiguous States and the District of Columbia, and the amounts applicable for use in Alaska, Hawaii, Guam, and the Virgin Islands are adjusted annually and will be prescribed in General Notices published in the FEDERAL REGISTER. Shelter costs shall include only the following:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; 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 shall not be included as shelter costs.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(6) *Standard utility allowance.* (i) The State agency may elect to offer a standard utility allowance to households for use in calculating shelter costs. The State agency may establish either:

(A) A separate standard utility allowance for individual utility expenses defined in paragraph (d)(5)(ii)(C) of this section;

(B) A single standard utility allowance which includes a heating or cooling component and which is available to all households which incur out-of-pocket heating or cooling expenses; or

(C) Two single standard utility allowances which include a heating or cooling component.

If the State agency chooses to develop two standard utility allowances for households which incur heating or cooling expenses, one standard shall only be used for those households which receive indirect energy assistance payments other than payments under the Low Income Home Energy Assistance Act of 1981, and the second standard shall be used for all other households. A cooling cost is a verifiable utility expense relating to the operation of air conditioning systems or room air conditioners.

(ii) The standard utility allowance which includes a heating or cooling component shall be made available only to households which incur heating and cooling costs separately and apart from their rent or mortgage. These households include:

(A) Residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering;

(B) Recipients of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981; or

(C) Recipients of indirect energy assistance payments, made under a program other than the Low Income Home Energy Assistance Act of 1981, who continue to incur out-of-pocket heating or cooling expenses in accordance with § 273.10(d)(6) during any month covered by the certification period.

To be qualified, the household must be billed on a regular basis for its heating or cooling costs. A household which incurs cooling or heating fuel costs on an irregular basis but is otherwise eligible to use the standard allowance may continue to use the allowance between billing periods. A household which lives in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs shall not be permitted to use the standard utility allowance which includes a heating or cooling cost component. If a household is not entitled to the standard utility allowance, it may claim the actual utility expenses (for any utility identified in paragraph (d)(5)(ii)(C) of this section) which it does pay separately.

(iii) The State agency may elect to develop either an annualized standard utility allowance or seasonal standard utility allowances. If the State agency elects to use a single annualized standard utility allowance it will not be required to seasonally adjust the budgets of qualified households which incur either heating or cooling costs. If the State agency elects to vary the allowance seasonally it shall ensure that during the heating season the allowance is provided only to households with heating costs, and that during the cooling season the allowance is provided only to households with cooling costs.

(iv) State agencies shall develop methodologies, subject to FCS approval, to be followed in establishing their standard utility allowances. The standard allowance(s) developed by the State agency shall be submitted to FCS for approval.

(v) The State agency may establish standard utility allowances as prescribed in paragraph (d)(6)(i) of this section.

(A) If the State agency establishes separate standard allowances, households which do not qualify for the standard allowance for heating and cooling costs may be allowed to use the other standard allowances.

(B) If the State agency establishes one or two single standard allowances, it shall include 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. If the State agency elects to develop a single standard for those households which receive indirect energy assistance payments, as provided for in paragraph (d)(6)(i) of this section, the standard shall reflect the average out-of-pocket heating or cooling expense for such households.

(C) The State agency may develop a method, subject to FCS approval, for calculating a mandatory telephone allowance for use in conjunction with a single utility allowance or as the standard allowance for the telephone if the State has separate standard allowances by utility. In States with a single utility allowance, the telephone allowance would apply to households which are not entitled to claim the overall standard, but which, nonetheless, incur separate telephone expenses. The State agency may mandate use of the telephone allowance even if actual telephone costs are higher.

(vi) The State agency shall review and adjust the standard utility allowance(s) annually to reflect changes in the cost of utilities. The State agency may use data gathered through quality control sampling, surveys of utility company rates, or other methods for updating the standard utility allowance(s). The State agency may vary the size of the standard utility allowance to reflect differences such as seasonal cost changes or cost variations between geographical areas.

(vii) At the time of certification the household shall be advised that it may deduct its actual utility costs rather than the standard allowances (except as provided in paragraph (d)(6)(v)(C) of this section for a telephone standard) throughout the certification period if

the household can verify these costs. The State agency shall further advise the household when it has the right to switch between the use of actual utility costs and the standard utility allowance. The State agency shall permit the household to switch between actual utility costs and the standard utility allowance at the time of recertification and one additional time during each twelve-month period.

(viii) If the household shares utility expenses with, and lives with, another individual not participating in the Food Stamp Program, another household participating in the Food Stamp Program, or both, the allowance shall be prorated among the household and the other individual, household, or both, *Provided*, That the State agency may, if it is unable to accurately determine the prorata share of utility costs paid by the parties, use the actual utility costs paid by each household. Under no circumstances shall the total amount of utility costs used to determine the amount of the deduction exceed the total amount of actual utility costs for the residence.

(7) *Child support deduction.* Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). The State agency shall allow a deduction for amounts paid toward arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction.

(8) *Adjustment of standard deduction.* (i) Effective October 1, 1987, and each October 1 thereafter, the standard deduction shall be adjusted to reflect change in the CPI–U for items other than food for the twelve months ending the preceding June 30.

(ii) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

(9) *Adjustment of shelter deduction.*

(i) Effective October 1, 1987, for households whose certification period begins on or after October 1, 1987, the maximum monthly excess shelter expense deduction limits shall be $164 for the 48 States and DC, $285 for Alaska, $234 for Hawaii, $199 for Guam, and $121 for the Virgin Islands. Effective October 1, 1987, for households whose certification period began before October 1, 1987, the maximum monthly excess shelter deduction limits shall be $152 for the 48 States and DC, $261 for Alaska, $217 for Hawaii, $185 for Guam, and $112 for the Virgin Islands. Households whose certification period began before October 1, 1987 shall receive the higher deduction limits stated in this paragraph beginning with the first month of the certification period for which such households are recertified after October 1, 1987. Effective October 1, 1988, and each October 1 thereafter, the maximum limit for excess shelter expense deductions shall be adjusted to reflect changes in the shelter, fuel, and utilities components of housing costs in the CPI–U for the twelve months ending the preceding June 30.

(ii) These adjustments shall be based on the previous unrounded numbers, and the result rounded down to the nearest lower dollar increment.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.9, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.10 Determining household eligibility and benefit levels.

(a) *Month of application*—(1) *Determination of eligibility and benefit levels.* (i) A household's eligibility shall be determined for the month of application by considering the household's circumstances for the entire month of application. Most households will have the eligibility determination based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FCS, use a fiscal month if the State agency determines that it is more efficient and satisfies FCS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households, such as from the 15th of one calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each

household depending on the date an individual files an application for the Program. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with § 273.1(e)(2) will have their eligibility determined for the month in which the applicant household was released from the institution.

(ii) A household's benefit level for the initial months of certification shall be based on the day of the month it applies for benefits and the household shall receive benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution in accordance with § 273.1(e)(2), the benefit level for the initial month of certification shall be based on the date of the month the household is released from the institution and the household shall receive benefits from the date of the household's release from the institution to the end of the month. 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 of more than one month, fiscal or calendar depending on the State's issuance cycle, during which the household was not certified for participation. For purposes of this provision, a household is not considered to be the same household as the previously participating household if the certification worker has established a new food stamp case for the household because of a significant change in the membership of the previously participating household. Recertification shall be processed in accordance with § 273.10(a)(2). The State agency shall prorate a household's benefits according to one of the two following options:

(A) The State agency shall use a standard 30-day calendar or fiscal month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month.

(B) The State agency shall prorate benefits over the exact length of a particular calendar or fiscal month.

(iii) To determine the amount of the prorated allotment, the State agency shall use either the appropriate Food Stamp Allotment Proration Table provided by FCS or whichever of the following formulae is appropriate:

(A) For State agencies which use a standard 30-day calendar or fiscal month the formula is as follows, keeping in mind that the date of application for someone applying on the 31st of a month is the 30th:

$$\text{full month's benefits} \times \frac{(31 - \text{date of application})}{30} = \text{allotment}$$

(B) For State agencies which use the exact number of days in a month, the formula is:

$$\text{full month's benefits} \times \frac{(\text{number of days in month} + 1 - \text{date of application})}{\text{number of days in month}} = \text{allotment}$$

(C) If after using the appropriate formula the result ends in 1 through 99 cents, the State agency shall round the product down to the nearest lower whole dollar. If the computation results in an allotment of less than $10, then no issuance shall be made for the initial month.

(iv) Those households which are entitled to expedited service as defined in § 273.2(i)(1), and which apply for benefits after the 15th of the month, shall be assigned certification periods in accordance with § 273.2(i)(4)(iii). However, the benefits for the second full month following the month of application shall not be issued until all necessary verification not already provided has been provided to the State agency.

(2) *Application for recertification.* Eligibility for recertification shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. The level of benefits for recertifications shall be based on the same anticipated circumstances, except for retrospectively budgeted households which shall be recertified in accordance with § 273.21(f)(2). If an application for recertification is submitted more than one month after the household's certification period has expired, that application shall be considered an initial application and benefits for that month shall be prorated in accordance with paragraph (a)(1)(ii) of this section. In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for the first month following the end of the certification period, then the first month of any subsequent participation shall be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

(3) *Anticipated changes.* Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of application even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in the subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2.

(4) *Changes in allotment levels.* As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(b) *Determining resources.* Available resources at the time the household is interviewed shall be used to determine the household's eligibility.

(c) *Determining income*—(1) *Anticipating income.* (i) For the purpose of determining the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available

to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lump-sum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving income on a recurring monthly or semimonthly basis shall not have their monthly income varied merely because of changes in mailing cycles or pay dates or because weekends or holidays cause additional payments to be received in a month.

(3) *Income averaging.* (i) Households, except destitute households, and PA households subject to a monthly reporting requirement, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs. To average income, the State agency shall use the household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the 2 known months may be averaged and projected over a certification period of longer than 2 months.

(ii) Households which, by contract or self-employment, derive their annual income in a period of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, sharecroppers, farmers, and

other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11. Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

(iii) Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.

(d) *Determining deductions.* Deductible deductions include only certain dependent care, shelter, child support and medical costs as described in § 273.9.

(1) *Disallowed expenses.* (i) Any expense, in whole or part, covered by educational income which has been excluded pursuant to the provisions of § 273.9(c)(3) shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost. In addition, an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. However, that portion of an allowable medical expense which is not reimbursable shall be included as part of the household's medical expenses. If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. A dependent care expense which is reimbursed or paid for by the Job Opportunities and Basic Skills Training (JOBS) program under title IV–F of the Social Security Act (42 U.S.C. 681) or the Transitional Child Care (TCC) program shall not be deductible. A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an inkind benefit, such as food.

(2) *Billed expenses.* Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a 3-month supply of fuel oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. 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 their certification period. Averaging would begin the month the change would become effective.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period. At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with §273.2(f)(8)(ii) if the change would increase the household's allotment. The State agency has the option of either requiring verification prior to acting on the change, or requiring the verification prior to the second normal monthly allotment after the change is reported. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by §273.2(f)(8) shall be obtained prior to the household's recertification. If a child in the household reaches his or her second birthday during the certification period, the $200 maximum dependent care deduction defined in §273.9(d)(4) shall be adjusted in accordance with this section not later than the household's next regularly scheduled recertification.

(5) *Conversion of deductions.* The income conversion procedures in paragraph (c)(2) of this section shall also apply to expenses billed on a weekly or biweekly basis.

(6) *Energy Assistance Payments.* Except for payments made under the Low Income Energy Assistance Act of 1981, the State agency shall prorate energy assistance payments as provided for in §273.9(d) over the entire heating or cooling season the payment is intended to cover.

(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in §271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in §273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of §273.9(d)(3) and the uncapped excess shelter expense deduction of §273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with §273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23, 1985, whichever is later, if the household incurs such expenses.

(8) *Child support deduction.* State agencies may budget child support payments prospectively, in accordance

with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) *Calculating net income and benefit levels*—(1) *Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self-employment income of a farmer shall be offset in accordance with § 273.11(a)(2)(iii).

(B) Multiply the total gross monthly earned income by 20 percent and subtract that amount from the total gross income; or multiply the total gross monthly earned income by 80 percent and add that to the total monthly unearned income, minus income exclusions.

(C) Subtract the standard deduction.

(D) If the household is entitled to an excess medical deduction as provided in § 273.9(d)(3), determine if total medical expenses exceed $35. If so, subtract that portion which exceeds $35.

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount as specified under § 273.9(d)(4) for each dependent. If the household is entitled to an excess shelter deduction, compute the household's excess shelter deduction in accordance with paragraph (e)(1)(i)(G) of this section.

(F) Subtract allowable monthly child support payments in accordance with § 273.9(d)(7).

(G) Total the allowable shelter expenses to determine shelter costs. 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)(H) of this section.

(H) Subtract the excess shelter cost up to the maximum amount allowed for the area (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to a capped shelter expense shall have the full amount exceeding 50 percent of their net income subtracted. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the State agency shall use one of the following two procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or

(B) Apply the rounding procedure that is currently in effect for the State's Aid to Families with Dependent Children (AFDC) program. If the State AFDC program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

(2) *Eligibility and benefits.* (i)(A) Households which contain an elderly or disabled member as defined in § 271.2, shall have their net income, as calculated in paragraph (e)(1) of this section (except for households considered destitute in accordance with paragraph (e)(3) of this section), compared to the monthly income eligibility standards defined in § 273.9(a)(2) for the appropriate household size to determine eligibility for the month.

(B) In addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in § 273.9(a)(1) for the

appropriate household size to determine eligibility for the month.

(C) For households considered destitute in accordance with paragraph (e)(3) of this section, the State agency shall determine a household's eligibility by computing its gross and net income according to paragraph (e)(3) of this section, and comparing, as appropriate, the gross and/or net income to the corresponding income eligibility standard in accordance with § 273.9(a)(1) or (2).

(D) If a household contains a member who is fifty-nine years old on the date of application, but who will become sixty before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.

(E) If a household contains a student whose income is excluded in accordance with § 273.9(c)(7) and the student becomes 22 during the month of application, the State agency shall exclude the student's earnings in the month of application and count the student's earnings in the following month. If the student becomes 22 during the certification period, the student's income shall be excluded until the month following the month in which the student turns 22.

(ii)(A) Except as provided in paragraphs (a)(1), (e)(2)(iii) and (e)(2)(vi) of this section, the household's monthly allotment shall be equal to the maximum food stamp allotment for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. If 30 percent of the household's net income ends in cents, the State agency shall round in one of the following ways:

(*1*) The State agency shall round the 30 percent of net income up to the nearest higher dollar; or

(*2*) The State agency shall not round the 30 percent of net income at all. Instead, after subtracting the 30 percent of net income from the appropriate Thrifty Food Plan, the State agency shall round the allotment down to the nearest lower dollar.

(B) If the calculation of benefits in accordance with paragraph (e)(2)(ii)(A) of this section for an initial month would yield an allotment of less than $10 for the household, no benefits shall be issued to the household for the initial month.

(C) Except during an initial month, all eligible one- and two-person households shall receive minimum monthly allotments equal to the minimum benefit and all eligible households with three or more members which are entitled to $1, $3, and $5 allotments shall receive allotments, of $2, $4, and $6, respectively, to correspond with current coupon book determinations.

(iii) For an eligible household with three or more members which is entitled to no benefits (except because of the proration requirements of paragraph (a)(1) and the provision precluding issuances of less than $10 in an initial month of paragraph (e)(2)(ii)(B)) of this section:

(A) The State agency shall deny the household's application on the grounds that its net income exceeds the level at which benefits are issued; or

(B) The State agency shall certify the household but suspend its participation, subject to the following conditions:

(*1*) The State agency shall inform the suspended household, in writing, of its suspended status, and of its rights and responsibilities while it is in that status.

(*2*) The State agency shall set the household's change reporting requirements and the manner in which those changes will be reported and processed.

(*3*) The State agency shall specify which changes shall entitle the household to have its status converted from suspension to issuance, and which changes shall require the household to reapply for participation.

(*4*) The household shall retain the right to submit a new application while it is suspended.

(*5*) The State agency shall convert a household from suspension to issuance status, without requiring an additional certification interview, and issue its initial allotment, within ten days of the date the household reports the change.

(*6*) The State agency shall prorate the household's benefits, in the first month after the suspension period, from the date the household reports a

change, in accordance with paragraph (a)(1) of this section.

(*7*) The State agency may delay the work registration of the household's members until the household is determined to be entitled to benefits.

(iv) For those eligible households which are entitled to no benefits in their initial month of application, in accordance with paragraph (a)(1) or (e)(2)(ii)(B) of this section, but are entitled to benefits in subsequent months, the State agency shall certify the households beginning with the month of application.

(v) When a household's circumstances change and it becomes entitled to a different income eligibility standard, the State agency shall apply the different standard at the next recertification or whenever the State agency changes the household's eligibility, benefit level or certification period, whichever occurs first.

(vi) During a month when a reduction, suspension or cancellation of allotments has been ordered pursuant to the provisions of § 271.7, eligible housholds shall have their benefits calculated as follows:

(A) If a benefit reduction is ordered, State agencies shall reduce the maximum food stamp allotment amounts for each household size by the percentage ordered in the Department's notice on benefit reductions. State agencies shall multiply the maximum food stamp allotment amounts by the percentage specified in the FCS notice; if the result ends in 1 through 99 cents, round the result up to the nearest higher dollar; and subtract the result from the normal maximum food stamp allotment amount. In calculating benefit levels for eligible households, State agencies would follow the procedures detailed in paragraph (e)(2)(ii) of this section and substitute the reduced maximum food stamp allotment amounts for the normal maximum food stamp allotment amounts.

(B) Except as provided in paragraphs (a)(1), (e)(2)(ii)(B), and (e)(2)(vi)(C) of this section, one- and two-person households shall be provided with at least the minimum benefit.

(C) In the event that the national reduction in benefits is 90 percent or more of the benefits projected to be issued for the affected month, the provision for a minimum benefit for households with one or two members only may be disregarded and all households may have their benefits lowered by reducing maximum food stamp allotment amounts by the percentage specified by the Department. The benefit reduction notice issued by the Department to effectuate a benefit reduction will specify whether minimum benefits for households with one or two members only are to be provided to households.

(D) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated according to the procedures in paragraph (e)(2)(ii) of this section. However, the allotments shall not be issued for the month the suspension or cancellation is in effect. The provision for the minimum benefit for households with one or two members only shall be disregarded and all households shall have their benefits suspended or cancelled for the designated month.

(E) In the event of a suspension or cancellation, or a reduction exceeding 90 percent of the affected month's projected issuance, all households, including one and two-person households, shall have their benefits suspended, cancelled or reduced by the percentage specified by FCS.

(3) *Destitute households.* Migrant or seasonal farmworker households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when migrant or seasonal farmworker households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Households other than migrant or seasonal farmworker households shall not be classified as destitute.

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service.

(A) If income is received on a monthly or more frequent basis, it shall be

considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than $25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than $25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than $25 from the new source will not be received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is by written contract an advance of wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. In addition, the receipt of a wage advance for travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 advance for travel from its new employer on May 1 which by written contract is an advance on wages, but will not receive any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and

not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(vii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than $25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a General Notice published in the FEDERAL REGISTER.

(ii) *Adjustment.* (A) Effective October 1, 1982, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twenty-one month period ending June 30, 1982, less one percent of the adjusted Thrifty Food Plan.

(B) Effective October 1, 1983, and October 1, 1984, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30, less one percent of the adjusted Thrifty Food Plan.

(C) Effective October 1, 1985, October 1, 1986, and October 1, 1987, the Thrifty Food Plan amounts shall be adjusted to the nearest lower dollar increment to reflect changes in the Consumer Price Index for All Urban Consumers for the cost of food during the twelve month period ending on the preceding June 30.

(D) Effective October 1, 1988, maximum food stamp allotments shall be based on 100.65 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(E) Effective October 1, 1989, maximum food stamp allotments shall be based on 102.05 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(F) Effective October 1, 1990 and each October 1, thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(f) *Certification periods.* The State agency shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification as required by § 273.2(f). Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

(1) Certification periods shall conform to calendar months, except where FCS has approved the use of fiscal months. At initial application, the first month in the certification period shall generally be the month of application, even if the household's eligibility is not determined until a subsequent month. For example, if a household files an application in January and the application is not processed until February, a 6-month certification period would include January through June. Upon recertification, the certification

period will begin with the month following the last month of the previous certification period.

(2) [Reserved]

(3)(i) Households in which all members are included in a single PA or GA grant shall have their food stamp recertifications at the same time they are redetermined for PA or GA. Definite food stamp certification periods must be assigned to these households in accordance with the provisions of this section, however, those periods may be shortened or extended in order to align the food stamp recertification date with the PA or GA redetermination date. The household's food stamp certification period can only be extended when the household is initially approved for PA/GA. The food stamp certification period may be extended up to 12 months to align the food stamp certification period with the PA/GA redetermination period. If the household's certification period is extended, the State agency shall notify the household of the changes in its certification period. At the end of the extended certification period the household must be sent a Notice of Expiration and must be recertified before being eligible for further food stamp assistance, even if the PA or GA redetermination is not set to expire. If the household's certification period is shortened, the State agency shall send it 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 in order that it may be recertified for food stamps at the same time that it is redetermined for PA or GA.

(ii) Households in which all members receive assistance under Title XIX of the Social Security Act or other medical assistance program may have their food stamp recertification at the same time they are redetermined for assistance under Title XIX or other medical assistance program. The State agency must follow the same requirements that apply in paragraph (f)(3)(i) of this section.

(4) Households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least 3 months, except as follows:

(i) Households eligible for a certification period of 3 months or less shall, at the time of certification, have their certification periods increased by 1 month, if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant the longer certification period. For example, if a household which is eligible for a 3-month certification period makes application in June and is not certified until late June or early July, the certification period would include June through September.

(ii) Households shall be certified for 1 or 2 months, as appropriate, when the household cannot reasonably predict what its circumstances will be in the near future, or when there is a substantial likelihood of frequent and significant changes in income or household status; for example, day laborers and migrant workers if income is uncertain and subject to large fluctuations during the work season due to the uncertainty of continuous employment or due to bad weather and other circumstances.

(iii) If a State agency opts to effect the Social Security/SSI cost-of-living increase through the process of recertification, the affected cases shall be assigned certification periods that ensure that they are due for recertification in accordance with § 273.12(e)(3)(ii). Households entitled to a certification period of up to 12 months as discussed in paragraph (f)(5) of this section shall, on a one-time basis, be certified for less than a year in order to comply with this provision.

(5) Households shall be certified for up to 6 months if there is little likelihood of changes in income and household status; for example, households with a stable income record and for which major changes in income, deductions, or composition are not anticipated.

(6) Households consisting entirely of unemployable or elderly persons with very stable income shall be certified

for up to 12 months provided other household circumstances are expected to remain stable; for example, social security recipients, SSI recipients and persons who receive pensions or disability payments.

(7) Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer shall be certified for up to 12 months, provided income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farmworkers who are provided their annual salaries on a scheduled monthly basis which does not change as the amount of work changes.

(8) Households required to submit monthly reports in accordance with § 273.21(b) shall be certified for not less than six months and not more than 12 months. The limit of 12 months may be waived for these households if the State agency can demonstrate that such a waiver would result in improved administration of the Program. The six-month minimum may be waived for households subject to less frequent than monthly reporting if the State agency can demonstrate that such a waiver would result in improved administration of the Program.

(9) Households eligible for a child support deduction that have no record of regular child support payments or of child support arrearages and are not required to report child support payment information required by the State agency periodically (monthly or quarterly) during the certification period shall be certified for no more than 3 months. Households with a record of regular child support and arrearage payments that are not required to report payment information periodically during the certification period shall be certified for no more than 6 months. These requirements do not apply to households whose certification periods are established in accordance with paragraphs (f)(3), (f)(6), or (f)(7) of this section. Households required to report monthly or quarterly shall be assigned certification periods in accordance with paragraph (f)(8) of this section.

(g) *Certification notices to households.* (1) *Initial applications.* State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility.* (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(C) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office (a toll-free number or a number where collect calls will be accepted for households outside the local calling area), and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. A household which is potentially categorically eligible but whose food stamp application is denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits or benefits from a State or local GA program. In cases where the State agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.2(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h) (2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) *Applications for recertification.* The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period if the household has complied with all recertification requirements. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.10, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* The procedures for handling income received from boarders by a household that does not own and operate a commercial boardinghouse are described in paragraph (b) of this section. For all other households receiving self-employment income, including those households that own and operate a commercial boardinghouse, the State agency shall

calculate the self-employment income as follows:

(1) *Annualizing self-employment income.* (i) Self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income is intended to support the farmer on an annual basis. However, if the averaged annualized 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 shall calculate the self-employment income on anticipated earnings. The State agency shall not calculate self-employment income on the basis of prior income (e.g. income tax returns) when the household has experienced a substantial increase or decrease in business. This self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment.

(ii) Self-employment income which is received on a monthly basis but which represents a household's annual support shall normally be averaged over a 12-month period. If, however, the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income based on anticipated earnings.

(iii) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(iv) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise shall be averaged over the period of time the business has been in operation, and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

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

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income (including capital gains), exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

(ii) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, the State agency shall add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. The State agency shall then add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. The cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

(iii) The monthly net self-employment income shall be added to any

other earned income received by the household. The total monthly earned income, less a 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household. If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. Losses from farm self-employment enterprises shall be offset in two phases. The first phase is an offsetting against non-farm self-employment income. The second phase is offsetting against the total of earned and unearned income. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. The standard deduction, dependent care, and shelter costs shall be computed in accordance with § 273.9(d) and subtracted to determine the monthly net income of the household. Net losses from the self-employment income of a farmer shall be prorated over the year in accordance with § 273.11(a)(1).

(iv) 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 shall 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 shall count the full amount of the capital gain as income for food stamp purposes.

(4) *Allowable costs of producing self-employment income.* (i) 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.

(ii) In determining net self-employment income, the following items shall not be allowable as costs of doing business:

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

(B) Net losses from previous periods;

(C) 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); and

(D) Depreciation.

(5) *Assigning certification periods.* (i) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. For those households that receive other sources of income or whose self-employment income is intended to cover a period of time that is less than a year, the State agency shall assign a certification period appropriate for the household's circumstances.

(ii) For those self-employed households that receive their annual income in a short period of time, the initial certification period shall be assigned to bring the household into the annual cycle. For example, the State agency may provide for recertification at the time the household normally receives all or a majority of its annual income or the State agency may prefer to have the annual cycle coincide with the filing of the household's income tax.

(b) *Households with income from boarders and day care.*—(1) *Households with boarders.* Persons paying a reasonable amount for room and board as specified in § 273.1(c) shall be excluded from the household when determining the household's eligibility and benefit level. The

income of households owning and operating a commercial boardinghouse shall be handled as described in paragraph (a) of this section. For all other households, payments from the boarder, except forter care boarders as defined in § 273.1(c)(6), shall be treated as self-employment income and the household's eligibility determined as follows:

(i) *Income from the boarder.* The income from boarders shall include all direct payments to the household for room and meals, including contributions to the household's shelter expenses. Shelter expenses paid directly by boarders to someone outside of the household shall not be counted as income to the household.

(ii) *Cost of doing business.* In determining the income received from boarders, the State agency shall exclude the portion of the boarder payment that is a cost of doing business. The amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals. Households may elect one of the following methods to determine the cost of doing business:

(A) The cost of the maximum food stamp allotment for a household size that is equal to the number of boarders; or

(B) The actual documented cost of providing room and meals, if the actual cost exceeds the appropriate maximum food stamp allotment. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded; or

(C) 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) *Deductible expenses.* The net income from self-employment shall be added to other earned income and a 20-percent earned income deduction shall be applied to the total. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

(2) *Income from day care.* Households deriving income from day care may elect one of the following methods of determining the cost of meals provided to the individuals:

(i) Actual documented costs of meals;

(ii) A standard per day amount based on estimated per meal costs; or

(iii) Current reimbursement amounts used in the Child and Adult Care Food Program.

(c) *Treatment of income and resources of certain nonhousehold members.* During the period of time that a household member cannot participate because he/she is an ineligible alien, is ineligible because of disqualification for an intentional Program violation, is ineligible because of noncompliance with a work requirement of § 273.7 is ineligible because of disqualification for failure or refusal to obtain or provide an SSN, or is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Intentional Program violation disqualification, workfare, or work requirement sanction.* The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of disqualification for intentional Program violation noncompliance with a work requirement of § 273.7 or imposition of a sanction while they were participating in a household disqualified for failure to comply with workfare requirements shall be determined as follows:

(i) *Income, resources, and deductible expenses.* The income and resources of the ineligible household member(s) shall continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support, and excess shelter deductions shall continue to apply to the remaining household members.

(ii) *Eligibility and benefit level.* The ineligible member shall not be included when determining the household's size for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits. The State agency shall ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

(2) *SSN disqualification and ineligible alien.* The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for being an ineligible alien or because of disqualification for refusal to obtain or provide an SSN shall be determined as follows:

(i) *Resources.* The resources of such ineligible members shall continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of such ineligible members shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible members' share is counted as income for the remaining household members.

(iii) *Deductible expenses.* The 20 percent earned income deduction shall apply to the prorated income earned by such ineligible members which is attributed to their households. That portion of the households' allowable child support payment, shelter and dependent care expenses which are either paid by or billed to the ineligible members shall be divided evenly among the households' members including the ineligible members. All but the ineligible members' share is counted as a deductible child support payment, shelter or dependent care expense for the remaining household members.

(iv) *Eligibility and benefit level.* Such ineligible members shall not be included when determining their households' sizes for the purposes of:

(A) Assigning a benefit level to the household;

(B) Comparing the household's monthly income with the income eligibility standards; or

(C) Comparing the household's resources with the resource eligibility limits.

(3) *Reduction or termination of benefits within the certification period.* Whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) *Excluded for intentional Program violation disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of consolidation of the administrative disqualification hearing with the fair hearing.

(ii) *SSN or workfare disqualification, ineligible alien, or work requirement sanction.* If a household's benefits are reduced or terminated within the certification period because one or more of its members is an ineligible alien, is ineligible because a sanction has been imposed while he/she was participating in a household disqualified for failing to comply with workfare requirements, is ineligible because of noncompliance with a work requirement of § 273.7 or is ineligible because he/she was disqualified for refusal to obtain or provide an SSN, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

(d) *Treatment of income and resources of other nonhousehold members.* (1) For all other nonhousehold members defined in § 273.1 (b)(1) and (b)(2) who are not specifically mentioned in paragraph (c) of this section, the income and resources of such individuals shall not be considered available to the household with whom the individual resides. Cash payments from the nonhousehold member to the household will be considered income under the normal income standards set in § 273.9(b). Vendor payments, as defined in § 273.9(c)(1), shall be excluded as income. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only the household's pro rata share deducted.

(2) When the earned income of one or more household members and the earned income of a nonhousehold member are combined into one wage, the income of the household members shall be determined as follows:

(i) If the household's share can be identified, the State agency shall count that portion due to the household as earned income.

(ii) If the household's share cannot be identified the State agency shall prorate the earned income among all those whom it was intended to cover and count that prorated portion to the household.

(3) Such nonhousehold members shall not be included when determining the size of the household for the purposes of:

(i) Assigning a benefit level to the household;

(ii) Comparing the household's monthly income with the income eligibility standards; or

(iii) Comparing the household's resources with the resource eligibility limits.

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(2). Prior to certifying any residents for food stamps, the State agency shall verify that the treatment center is authorized by FCS as a retailer if the center wishes to redeem coupons through a wholesaler or, if it is not authorized by FCS as a retailer that it is 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). The guidelines for issuing FCS authorizations to these treatment centers are set forth in § 278.1(e).

(2) Each treatment and rehabilitation center shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State agency shall require the list on either a monthly or semimonthly basis. In addition, the State agency shall conduct periodic random onsite visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The following provisions apply to residents of treatment centers:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and documentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances

and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The treatment center shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and of when the addict or alcoholic leaves the treatment center. The treatment center shall return a household's ATP or coupons received after the household has left the center.

(5)(i) When the household leaves the center, the center shall provide the resident household with its ID card and any untransacted ATP cards. The household, not the center, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. The departing household shall also receive its full allotment if already issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the treatment and rehabilitation program prior to the 16th day of the month, the treatment center shall provide the household with one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons.

(ii) Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The center, if possible, shall 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 shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The treatment center shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the individual with the coupons or they left on or after the 16th of the month.

(6) The organization or institution shall be responsible for any misrepresentation or intentional Program violation which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution authorized by FCS as a retail food store may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FCS when it has reason to believe that an organization or institution is misusing coupons in its possession. However, the State agency shall take no action prior to FCS action against the organization or institution. The State agency shall establish a claim for overissuances of food coupons held on behalf of resident clients as stipulated in paragraph (e)(6) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. If FCS disqualifies an organization or institution as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

(f) *Residents of a group living arrangement.* (1) Disabled or blind residents of a group living arrangement (as defined in § 271.2) may voluntarily apply for the Food Stamp Program. If these residents apply through the use of the facility's authorized representative, their eligibility shall be determined as one-

person households. If the residents apply on their own behalf, the household size shall be in accordance with the definition in § 273.1. The State agency shall certify these residents using the same provisions that apply to all other households. Prior to certifying any residents for food stamps, the State agency shall verify that the group living arrangement is authorized by FCS or is certified by the appropriate agency or agencies of the State (as defined in § 271.2) including that agency's (or agencies') determination that the center is a nonprofit organization.

(2) Each group living arrangement shall provide the State agency with a list of currently participating residents. This list shall include a statement signed by a responsible center official attesting to the validity of the list. The State shall require the list on a periodic basis. In addition, the State agency shall conduct periodic random onsite visits to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(3) The same provisions applicable in § 273.11(e)(3) to residents of treatment centers also apply to blind or disabled residents of group living arrangements when the facility acts as the resident's authorized representative.

(4) If the resident has made application on his/her own behalf, the household is responsible for reporting changes to the State agency as provided in § 273.12(a). If the group living arrangement is acting in the capacity of an authorized representative, the group living arrangement shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and when the individual leaves the group living arrangement. The group living arrangement shall return any household's ATP card or coupons to the State agency if they are received after the household has left the group living arrangement.

(5)(i) When the household leaves the facility, the group living arrangement, either acting as an authorized representative or retaining use of the coupons on behalf of the residents (regardless of the method of application), shall provide residents with their ID cards (if applicable) and any untransacted ATP cards. The household, not the group living arrangement, shall be allowed to sign for and receive any remaining authorized benefits reflected on HIR cards. Also, the departing household shall receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. However, if the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the group living arrangement prior to the 16th day of the month, the facility shall provide the household with its ID card (if applicable) and one half of its monthly coupon allotment. If the household leaves on or after the 16th day of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents shall be given a pro rata share of one-half of the coupon allotment if leaving prior to the 16th day of the month and shall be instructed to obtain ID cards or written authorizations to use the coupons from the local office.

(ii) Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative. The group living arrangement, if possible, shall provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the group living arrangement and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(iii) The group living arrangement shall return to the State agency any coupons not provided to departing residents at the end of each month. These returned coupons shall include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with the coupons.

(6) The same provisions applicable to drug and alcoholic treatment center in paragraphs (e) (6) and (7) of this section

also apply to group living arrangements when acting as an authorized representative. These provisions, however, are not applicable if a resident has applied on his/her own behalf. The resident applying on his/her own behalf shall be responsible for overissuances as would any other household as discussed in § 273.18.

(7) The group living arrangement 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 group living arrangement services or if meals are prepared at a central location for delivery to the individual residents. If residents purchase and/or prepare food for home consumption, as opposed to communal dining, the group living arrangement shall ensure that each resident's food stamps are used for meals intended for that resident. If the resident retains use of his/her own coupon allotment, he/she may either use the coupons to purchase meals prepared for them by the facility or to purchase food to prepare meals for their own consumption.

(g) *Shelters for battered women and children.* (1) Prior to certifying its residents under this paragraph, the State agency shall determine that the shelter for battered women and children meets the definition in § 271.2 and document the basis of this determination. Shelters having FCS authorization to redeem at wholesalers shall be considered as meeting the definition and the State agency is not required to make any further determination. The State agency may choose to require local project area offices to maintain a list of shelters meeting the definition to facilitate prompt certification of eligible residents following the special procedures outlined below.

(2) Many shelter residents have recently left a household containing the person who has abused them. Their former household may be certified for participation in the Program, and its certification may be based on a household size that includes the women and children who have just left. Shelter residents who are included in such certified households may nevertheless apply for and (if otherwise eligible) participate in the Program as separate households if such certified household which includes them is the household containing the person who subjected them to abuse. Shelter residents who are included in such certified households may receive an additional allotment as a separate household only once a month.

(3) Shelter residents who apply as separate households shall be certified solely on the basis of their income and resources and the expenses for which they are responsible. They shall be certified without regard to the income, resources, and expenses of their former household. Jointly held resources shall be considered inaccessible in accordance with § 273.8. Room payments to the shelter shall be considered as shelter expenses.

(4) Any shelter residents eligible for expedited service shall be handled in accordance with § 273.2(i).

(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 either shortening the certification period by issuing a notice of expiration in accordance with § 273.14(b) to the former household of shelter residents or acting on the reported change in accordance with § 273.12 by issuing a notice of adverse action in accordance with § 273.13.

(h) *Homeless food stamp households.* Homeless food stamp households shall be permitted to use their food stamp benefits to purchase prepared meals from homeless meal providers authorized by FCS under § 278.1(h).

(i) *Prerelease applicants.* A household which consists of a resident or residents of a public institution(s) which applies for SSI under SSA's Prerelease Program for the Institutionalized shall be allowed to apply for food stamp benefits jointly with their application for SSI prior to their release from the institution. Such households shall be certified in accordance with the provisions of § 273.1(e), § 273.2(c), (g), (i), (j) and (k), and § 273.10(a), as appropriate.

(j) *Households containing sponsored alien members.* (1) *Definitions.* ''Sponsored alien'' means those aliens lawfully admitted for permanent residence into the United States as described in § 273.4(a)(2). ''Sponsor'' means a person

who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident. ''Date of entry'' or ''Date of admission'' means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(2) *Deeming of sponsor's income and resources as that of the sponsored alien.* Portions of the gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) shall be deemed to be the unearned income and resources of a sponsored alien for three years following the alien's admission for permanent residence to the United States. The spouse's income and resources will be counted even if the sponsor and spouse were married after the signing of the agreement.

(i) The monthly income of the sponsor and sponsor's spouse (if living with the sponsor) deemed to be that of the alien shall be the total monthly earned and unearned income as defined in § 273.9(b) (including the income exclusions provided for 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 Program participation, reduced by: (A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse; and (B) an amount equal to the Food Stamp Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(ii) If the alien has already reported gross income information on his/her sponsor due to AFDC's sponsored alien rules, that income amount may be used for Food Stamp Program deeming purposes. However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien shall be limited to the 20 percent earned income amount and the Food Stamp Program's gross monthly income amount provided for in paragraphs (j)(2)(i)(A) and (j)(2)(i)(B) of this section.

(iii) Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount attributed to the alien under paragraph (j)(2)(i) of this section. Only the portion of the amount paid that actually exceeds the amount deemed would be considered income to the alien in addition to the deemed income amount.

(iv) Resources of the sponsor and sponsor's spouse to be deemed to be that of the alien shall be the total amount of their resources as determined in accordance with § 273.8, reduced by $1,500.

(v) The amount of income and resources deemed to be that of the sponsored alien in accordance with paragraphs (j)(2)(i) and (iv) of this section, shall be considered in determining the eligibility and benefit level of the household of which the alien is a member.

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

(vii) If the alien reports that he/she has changed sponsors during the certification period, then deemed income and resources shall be recalculated based on the required information about the new sponsor and sponsor's spouse as outlined in paragraphs (j)(2)(i) through (j)(2)(iv) of this section and the reported change would be handled in accordance with the timeframes and procedures outlined in § 273.12 or § 273.21, as appropriate. In the event that an alien loses his/her sponsor during the three-year limit on the sponsored alien provisions of this section and does not obtain another, the deemed income and resources of the previous sponsor shall continue to be attributed to the alien until such time as the alien obtains another sponsor or until the three-year period for applying

the sponsored alien provisions expires, whichever occurs first. However, should the alien's sponsor become deceased, the deemed income and resources of sponsor shall no longer be attributed to the alien.

(3) *Exempt aliens.* The provisions of this paragraph do not apply to:

(i) An alien who is participating in the Food Stamp Program as a member of his/her sponsor's household or an alien whose sponsor is participating in the Food Stamp Program separate and apart from the alien;

(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, but not limited to, a refugee, a parolee, one granted asylum, and a Cuban or Haitian entrant.

(4) *Sponsored alien's responsibility.* For a period of three years from the alien's date of entry or date of admission as a lawful permanent resident, the alien shall be responsible for obtaining the cooperation of his/her sponsor, for providing the State agency at the time of application and at the time of recertification with the information and/or documentation necessary to calculate deemed income and resources in accordance with paragraphs (j)(2)(i) through (j)(2)(iv) of this section, and for providing the names (or other identifying factors) of other aliens for whom the alien's sponsor has signed an agreement to support to enable the State agency to determine how many of such other aliens are Food Stamp Program applicants or participants and initiate the proration provisions in paragraph (j)(2)(vi) of this section. If such information about other aliens for whom the sponsor is responsible is not provided to the State agency, the deemed income and resource amounts calculated shall be attributed to the applicant alien in their entirety until such time as the information is provided. The alien shall also 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 become deceased during the certification period. Such changes shall be handled in accordance with the timeliness standards and procedures described in §§ 273.12 and 273.21, as appropriate.

(5) *State agency responsibilities.* (i) The State agency shall obtain the following information from the alien at the time of the household's initial application and at the time the household applies for recertification:

(A) The income and resources of the alien's sponsor and the sponsor's spouse (if living with the sponsor).

(B) The names or other identifying factors (such as an alien registration number) of other aliens for whom the sponsor has signed an affidavit of support or similar agreement to enable the State agency to fulfill the requirements of paragraph (j)(2)(vi) of this section.

(C) The provision of the Immigration and Nationality Act under which the alien was admitted.

(D) The date of the alien's entry or admission as a lawful permanent resident as established by INS.

(E) The alien's date of birth, place of birth, and alien registration number.

(F) The number of dependents who are claimed or could be claimed as dependents by the sponsor or the sponsor's spouse for Federal income tax purposes.

(G) The name, address and phone number of the alien's sponsor.

(ii) The State agency shall verify income information obtained in accordance with paragraphs (j)(4) and (j)(5)(i) of this section. The State agency shall verify all other information obtained in accordance with paragraphs (j)(4) and (j)(5)(i) of this section if questionable and which affects household eligibility and benefit levels in accordance with the procedures established in § 273.2(f). State agencies shall assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Awaiting verification.* While the State agency is awaiting receipt and/or verification from the alien of information necessary to carry out the provisions of paragraph (j)(2) of this section, the sponsored alien shall be ineligible

until such time as all necessary facts are obtained. The eligibility of any remaining household members shall 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) shall 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 and/or verifying needed information, other adult members of the alien's household shall be responsible for providing and/or verifying information required in accordance with the provisions of § 273.2(d). If the information and/or verification is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as needed sponsor information is provided and/or verified. State agencies shall assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(7) *Memorandum of agreement.* The Secretary shall enter into an agreement with the Secretary of State and the Attorney General whereby they shall inform any sponsor of an alien and the alien, at the time the sponsor executes an affidavit of support or similar agreement on behalf of an alien, of the requirements of section 1308 of Pub. L. 97–98. Under the agreement the Bureau of Consular Affairs of the State Department and local INS offices shall provide information to State agencies that is needed to carry out the provisions of this paragraph. This agreement shall set forth the specific information that must be released by all parties to facilitate identification of the alien and sponsor and enable State agencies to perform required verification of information supplied by the alien which is essential for eligibility determinations, as specified in paragraph (j)(5) of this section.

(8) *Overissuance due to incorrect sponsor information.* (i) Any sponsor of an alien and alien shall be jointly and severably liable for repayment of any overissuance of coupons as a result of incorrect information provided by the sponsor. However, if the alien's sponsor had good cause or was without fault for supplying the incorrect information, the alien's household shall be solely liable for repayment of the overissuance. The State agency shall establish procedures for determining good cause under this provision, and shall include such procedures in its State Plan of Operation.

(ii) Where the sponsor did not have good cause, the State agency shall decide whether to establish a claim for the overissuance against the sponsor or the alien's household, or both. The State agency may choose to establish claims against both parties at the same time or to establish a claim against the party it deems most likely to repay first. If a claim is established against the alien's sponsor first, the State agency shall ensure that a claim is established against the alien's household whenever the sponsor fails to respond to the State agency's demand letter within 30 days of receipt. The State agency shall return to the alien's sponsor and/or the alien's household any amounts repaid in excess of the total amount of the claim.

(iii) *Collecting claims against sponsors.* (A) State agencies shall initiate collection action by sending the alien's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the sponsor may pay the claim. The sponsor shall also be informed that the sponsor will not be held responsible for repayment of the claim if the sponsor can demonstrate that he/she had good cause or was without fault for the incorrect information having been supplied to the State agency. In addition, the State agency shall follow-up the written demand letter with personal contact, if possible. The sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault where it was determined that incorrect information has been provided or to contest the amount of the claim.

(B) The State agency may pursue other collection actions, as appropriate, to obtain payment of a claim

against any sponsor which fails to respond to a written demand letter. The State agency may terminate collection action against a sponsor at any time if it has documentation that the sponsor cannot be located or when the cost of further collection is likely to exceed the amount that can be recovered.

(C) If the alien's sponsor responds to the written demand letter and is financially able to pay the claim at one time, the State agency shall collect a lumpsum cash payment. The State agency may negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are provided in regular installments. Payments shall be submitted to FCS in accordance with the procedures specified in § 273.18(h). For submission to FCS, any funds collected from the sponsor shall be reported and the State agency's retention shall be based on whether the corresponding claim against the alien's household is being treated as an inadvertent household error claim or intentional misrepresentation or fraud claim.

(iv) *Collecting claims against alien households.* Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information concerning the alien's sponsor or sponsor's spouse, the State agency shall determine whether such incorrect information was supplied due to inadvertent household error or an act of intentional Program violation on the part of the alien. If sufficient documentary evidence exists to substantiate that the incorrect information was provided in an act of intentional Program violation on the part of the alien, the State agency shall pursue the case in accordance with § 273.16 for intentional Program violation disqualifications. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional Program violation by an administrative disqualification hearing official or a court of appropriate jurisdiction. If the State agency determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with § 273.18. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

(k) *Failure to comply with another assistance program's requirements.* A State agency shall not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds, have been decreased (reduced, suspended or terminated) due to an intentional failure to comply with a requirement of the program that imposed the benefit decrease. This provision does not apply in the case of individuals or households subject to a food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2). State agency procedures shall adhere to the following minimum conditions:

(1) This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information.

(2) A State agency shall not reduce, suspend or terminate a household's current food stamp allotment amount when the household's benefits under another applicable assistance program have been decreased due to an intentional failure to comply with a requirement of that program.

(3) A State agency must adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another Federal, State or local welfare or public assistance means-tested program.

(4) Changes in household circumstances which are not related to a penalty imposed by another Federal,

State or local welfare or public assistance means-tested program shall not be affected by this provision.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified households are required to report the following changes in circumstances:

(i) Changes in the sources of income or in the amount of gross monthly income of more than $25, except changes in the public assistance grant, or the general assistance grant in project areas where GA and food stamp cases are jointly processed in accord with §273.2(j)(2). Since the State agency has prior knowledge of all changes in the public assistance grant and general assistance grants, action shall be taken on the State agency information;

(ii) All changes in household composition, such as the addition or loss of a household member;

(iii) Changes in residence and the resulting change in shelter costs;

(iv) The acquisition of a licensed vehicle not fully excludable under §273.8(e); and

(v) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of $2,000.

(vi) Changes in the legal obligation to pay child support.

(2) Certified households shall report changes within 10 days of the date the change becomes known to the household. Optional procedures for reporting changes are contained in §273.12(f) for households in States with FCS-approved forms for jointly reporting food stamp and public assistance changes and food stamp and general assistance changes.

(3) An applying household shall report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in paragraph (a)(1) of this section, which occur after the interview but before the date of the notice of eligibility, shall be reported by the household within 10 days of the date of the notice.

(4) The State agency may require a household that is eligible to receive a child support deduction in accordance with §273.9(d)(7) to report information required by the State agency regarding child support on a change report, a monthly report, or quarterly report. The State agency shall process the reports in accordance with procedures for the systems used in budgeting the household's income and deductions. The following requirements apply to quarterly reports:

(i) The State agency shall provide the household a reasonable period after the end of the last month covered by the report in which to return the report. If the household does not file the report by the due date or files an incomplete report, the State agency shall provide the household with a reminder notice advising the household that it has 10 days from the date the State agency mails the notice to file a complete report. If the household does not file a complete report by the extended filing date as specified in the reminder notice, the State agency shall determine the household's eligibility and benefits without consideration of the child support deduction. The State agency shall not terminate the benefits of a household for failure to submit a quarterly report unless the household is otherwise ineligible. The State agency shall send the household an adequate notice as defined in §271.2 of this chapter if the household fails to submit a complete report or if the information contained on a complete report results in a reduction or termination of benefits. The quarterly report shall meet the requirements specified in paragraph (b) of this section. The State agency may combine the content of the reminder notice and the adequate notice as long as the notice meets the requirements of the individual notices.

(ii) The quarterly report form, if required, shall be the sole reporting requirement for reporting child support payments during the certification period. Households excluded from monthly reporting as specified in §273.21(b) and households required to submit monthly reports shall not be required to submit quarterly reports.

(5) State agencies shall not impose any food stamp reporting requirements on households except as provided in paragraph (a) of this section.

(b) *Report forms.* (1) The State agency shall provide the household with a form for reporting the changes required in paragraph (a)(1) of this section to be reported within 10 days and shall pay the postage for return of the form. The change report form shall, at a minimum, include the following:

(i) A space for the household to report whether the change shall continue beyond the report month;

(ii) The civil and criminal penalties for violations of the Act in understandable terms and in prominent and boldface lettering;

(iii) A reminder to the household of its right to claim actual utility costs if its costs exceed the standard;

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

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

(2) A quarterly report form for reporting changes in the child support obligation and payments shall be written in clear, simple language and meet the bilingual requirements described in § 272.4(b) of this chapter. The report shall meet the requirements of § 273.21(h)(2)(iii) through (h)(2)(vii).

(3) Changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

(4) A change report form shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. A change report may be provided to households more often at the State agency's option.

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. However, during the certification period, the State agency shall not act on changes in the medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, require the State agency to contact the household for verification. The State agency shall only act on those changes in medical expenses that it learns about from a source other than the household if those changes are verified upon receipt and do not necessitate contact with the household. Even if there is no change in the allotment, the State agency shall document the reported change in the casefile, provide another change report form to the household, and notify the household of the receipt of the change report. If the reported change affects the household's eligibility or level of benefits, the adjustment shall also be reported to the household. The State agency shall also advise the household of additional verification requirements, if any, and state that failure to provide verification shall result in increased benefits reverting to the original allotment. The State agency shall document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a personal visit. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* (i) For changes which result in an increase in a household's benefits, other than changes described in paragraph (c)(1)(ii) of this section, the State agency shall make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a $30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

(ii) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50 or more in the household's gross monthly income, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the State agency to adjust the following month's allotment, the State agency shall issue a supplementary ATP or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later. For example, a household reporting a $100 decrease in income at any time during May would have its June allotment increased. If the household reported the change after the 20th of May and it was too late for the State agency to adjust the ATP normally issued on June 1, the State agency would issue a supplementary ATP for the amount of the increase by June 10.

(iii) The State agency may elect to verify changes which result in an increase in a household's benefits in accordance with the verification requirements of § 273.2(f)(8)(ii), prior to taking action on these changes. If the State agency elects this option, it must allow the household 10 days from the date the change is reported to provide verification required by § 273.2(f)(8)(ii). If the household provides verification within this period, the State shall take action on the changes within the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section. The timeframes shall run from the date the change was reported, not from the date of verification. If, however, the household fails to provide the required verification within 10 days after the change is reported but does provide the verification at a later date, then the timeframes specified in paragraphs (c)(1) (i) and (ii) of this section for taking action on changes shall run from the date verification is provided rather than from the date the change is reported. If the State agency does not elect this option, verification required by § 273.2(f)(8)(ii) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If in these circumstances the household does not provide verification, the household's benefits will revert to the original benefit level. Whenever a State agency increases a household's benefits to reflect a reported change and subsequent verification shows that the household was actually eligible for fewer benefits, the State agency shall establish a claim for the overissuance in accordance with § 273.18. In cases where the State agency has determined that a household has refused to cooperate as defined in § 273.2(d), the State agency shall terminate the household's eligibility following the notice of adverse action.

(2) *Decreases in benefits.* (i) If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported unless one of the exemptions to the notice of adverse action in § 273.13 (a)(3) or (b) applies. When a notice of adverse action is used, the decrease in the benefit level shall be made effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. When a notice of adverse action is not used due to one of the exemptions in § 273.13 (a)(3) or (b), the decrease shall be made effective no later than the month following the change. Verification which is required by § 273.2(f) must be obtained prior to recertification.

(ii) The State agency may suspend a household's certification prospectively for one month if the household becomes temporarily ineligible because of a periodic increase in recurring income or other change not expected to continue in the subsequent month. If the suspended household again becomes eligible, the State agency shall issue

benefits to the household on the household's normal issuance date. If the suspended household does not become eligible after one month, the State agency shall terminate the household's certification. Households are responsible for reporting changes as required by paragraph (a) of this section during the period of suspension.

(d) *Failure to report.* If the State agency discovers that the household failed to report a change as required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household circumstances which it is not required to report in accordance with § 273.12(a)(1). Individuals shall not be disqualified for failing to report a change, unless the individual is disqualified in accordance with the disqualification procedures specified in § 273.16.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include, but are not limited to, adjustments to the income eligibility standards, the shelter and dependent care deductions, the maximum food stamp allotment and the standard deduction; annual and seasonal adjustments to State utility standards; periodic cost-of-living adjustments to Retirement, Survivors, and Disability Insurance (RSDI), Supplemental Security Income (SSI) and other Federal benefits; periodic adjustments to Aid to Families with Dependent Children (AFDC) or General Assistance (GA) payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards.* (i) State agencies shall implement these changes for all households at a specific point in time. Adjustments to Federal standards shall be implemented prospectively regardless of the household's budgeting system. Annual and seasonal adjustments in State utility standards shall also be implemented prospectively for all households.

(A) Adjustments in the maximum food stamp allotment shall be effective in accordance with § 273.10(e)(4)(ii).

(B) Adjustments in the standard deduction shall be effective in accordance with § 273.9(d)(7).

(C) Adjustments in the shelter deduction shall be effective in accordance with § 273.9(d)(8).

(D) Adjustments in the income eligibility standards shall be effective in accordance with § 273.9(a)(3).

(ii) A notice of adverse action shall not be used for these changes. At a minimum, the State agencies shall publicize these mass changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or general notices mailed to households. At its option, the State agency may send the notice described in paragraph (e)(4) of this section or some other type of written explanation of the change. A household whose certification period overlaps a seasonal variation in the State utility standard shall be advised at the time of initial certification of when the adjustment will occur and what the variation in the benefit level will be, if known.

(2) *Mass changes in public assistance and general assistance.* (i) When the State agency makes an overall adjustment to public assistance (PA) payments, corresponding adjustments in households' food stamp benefits shall be handled as a mass change in accordance with the procedures in paragraphs (e) (4), (5) and (6) of this section. When the State agency has at least 30 days, advance knowledge of the amount of the PA adjustment, the State agency shall make the change in benefits effective in the same month as the PA change. If the State agency does not have sufficient notice, the food stamp change shall be effective no later than the month following the month in which the PA change was made.

(ii) State agencies which also administer a general assistance (GA) program shall handle mass adjustments to GA

payments in accordance with the schedules outlined in paragraph (e)(2)(i) and the procedures in paragraphs (e) (4), (5) and (6) of this section. However, where State agencies do not administer both programs, mass changes in GA payments shall be subject to the schedule in paragraph (e)(3) and the procedures in paragraphs (e) (4), (5) and (6) of this section.

(3) *Mass changes in Federal benefits.* The State agency shall establish procedures for making mass changes to reflect cost-of-living adjustments (COLAs) in benefits and any other mass changes under RSDI, SSI, and other programs such as veteran's assistance under title 38 of the United States Code and the Black Lung Program, where information on COLA's is readily available and is applicable to all or a majority of those programs' beneficiaries. Households on retrospective budgeting but not monthly reporting shall have the change reflected in accordance with the State's system. Monthly reporting households shall report the change on the appropriate monthly report but are not required to report these types of changes outside the monthly report. The State agency shall handle such information provided on the monthly report in accordance with its normal procedures. Households not subject to monthly reporting shall not be responsible for reporting these changes. The State agency shall be responsible for automatically adjusting a household's food stamp benefit level. The change shall be reflected no later than the second allotment issued to nonmonthly reporting households issued after the month in which the change becomes effective.

(4) *Notice for Mass Changes.* When the State agency makes a mass change in food stamp eligibility or benefits by simultaneously converting the caseload or that portion of the caseload that is affected, or by conducting individual desk reviews in place of a mass change, it shall notify all households whose benefits are reduced or terminated in accordance with the requirements of this paragraph, except for mass changes made under § 273.12(e)(1); and

(i) At a minimum, the State agency shall inform the household of:

(A) The general nature of the change;

(B) Examples of the change's effect on households' allotments;

(C) The month in which the change will take effect;

(D) The household's right to a fair hearing;

(E) The household's right to continue benefits and under what circumstances benefits will be continued pending a fair hearing;

(F) General information on whom to contact for additional information; and

(G) The liability the household will incur for any overissued benefits if the fair hearing decision is adverse.

(ii) At a minimum, the State agency shall notify the household of the mass change or the result of the desk review on the date the household is scheduled to receive the allotment which has been changed.

(iii) In addition, the State shall notify the household of the mass change as much before the household's scheduled issuance date as reasonably possible, although the notice need not be given any earlier than the time required for advance notice of adverse action.

(5) *Fair hearings.* The household shall be entitled to request a fair hearing when it is aggrieved by the mass change.

(6) *Continuation of benefits.* A household which requests a fair hearing due to a mass change shall be entitled to continued benefits at its previous level only if the household meets three criteria;

(i) The household does not specifically waive its right to a continuation of benefits;

(ii) The household requests a fair hearing in accordance with § 273.13(a)(1); and

(iii) The household's fair hearing is based upon improper computation of food stamp eligibility or benefits, or upon misapplication or misinterpretation of Federal law or regulation.

(f) *PA and GA households.* (1) Except as provided in paragraph (f)(2) of this section, PA households have the same reporting requirements as any other food stamp household. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change

for food stamp purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food stamp cases are processed jointly in accordance with provisions of § 273.2(j)(3).

(2)(i) State agencies may use a joint change reporting form for households to report changes for both PA and food stamp purposes. Whenever a joint change reporting form is used, the State agency shall insure that adjustments are made in a household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

(ii) State agencies may combine the use of a joint PA/food stamp change reporting form with a PA reporting system that demands the regular submission of reports, such as a monthly reporting system. The State agency shall insure that the procedures in § 273.21(h) are followed.

(3) Households shall be notified whenever their benefits are altered as a result of changes in the PA benefits or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period shall not end any earlier than the month following the month in which the State agency determines that the certification period should be shortened, allowing adequate time for the State agency to send a notice of expiration and for the household to timely reapply. If the PA benefits are terminated but the household is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration requirements, if applicable, as their WIN registration exemption no longer applies.

(4) Whenever a change results in the reduction or termination of a household's PA benefits within its food stamp certification period, and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency shall take the following actions:

(i) If a change in household circumstances requires both a reduction or termination in the PA payment and a reduction or termination in food stamp benefits, the State agency shall issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the hearing shall be conducted according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in paragraph (c) of this section.

(ii) If the household's food stamp benefits will be increased as a result of the reduction or termination of PA benefits, the State agency shall issue the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits shall continue at the previous basis. If the household does not appeal, the State agency shall make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(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, rendering the household categorically ineligible for public assistance, and the State agency does not have any information on the income of the new household member), the State agency shall not terminate

the household's food stamp benefits but shall instead 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.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.12, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.13 Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area) and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

(3) The State agency may notify a household that its benefits will be reduced or terminated, no later than the date the household receives, or would have received, its allotment, if the following conditions are met:

(i) The household reports the information which results in the reduction or termination.

(ii) The reported information is in writing and signed by the household.

(iii) The State agency can determine the household's allotment or ineligibility based solely on the information provided by the household as required in paragraph (a)(3)(ii) of this section.

(iv) The household retains its right to a fair hearing as allowed in §273.15.

(v) The household retains its right to continued benefits if the fair hearing is requested within the time period set by the State agency in accordance with §273.13(a)(1).

(vi) The State agency continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

(b) *Exemptions from notice.* Individual notices of adverse action shall not be provided when:

(1) The State initiates a mass change as described in §273.12(e).

(2) The State agency determines, based on reliable information, that all members of a household have died.

(3) The State agency determines, based on reliable information, that the household has moved from the project area.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for intentional Program violation, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in § 273.16.

(8) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice as provided in § 273.2(i)(4).

(9) The State agency must change the household's benefits back to the original benefit level as required in § 273.12(c)(1)(iii).

(10) Converting a household from cash and/or food stamp coupon repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in § 273.18.

(11) The State agency is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from the appropriate agency or agencies of the State (as defined in § 271.2) or has its status as an authorized representative suspended due to FCS disqualifying it as a retailer. However, residents of group living arrangements applying on their own behalf are still eligible to participate.

(12) The household voluntarily requests, in writing or in the presence of a caseworker, that its participation be terminated. If the household does not provide a written request, the State agency shall send the household a letter confirming the voluntary withdrawal. Written confirmation does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

(13) The State agency determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. The State agency shall inform the household of its termination no later than its next scheduled issuance date. While the State agency may inform the household before its next issuance date, the State agency shall not delay terminating the household's participation in order to provide advance notice.

(14) The State agency initiates recoupment of a claim as specified in § 273.18(g)(4) against a household which has previously received a notice of adverse action with respect to such claim.

(c) *Optional notice.* The State agency may, at its option, send the household an adequate notice as provided in paragraph (b)(3) of this section when the household's address is unknown and mail directed to it has been returned by the post office indicating no known forwarding address.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.13, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.14 Recertification.

(a) *General.* No household may participate beyond the expiration of the certification period assigned in accordance with §273.10(f) without a determination of eligibility for a new period. The State agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.

(b) *Recertification process.* (1) *Notice of expiration.* (i) The State agency shall provide households certified for one month or certified in the second month of a two-month certification period a notice of expiration (NOE) at the time of certification. The State agency shall provide other households the NOE before the first day of the last month of the certification period, but not before the first day of the next-to-the-last month. Jointly processed PA and GA households need not receive a separate food stamp notice if they are recertified for food stamps at the same time as their PA or GA redetermination.

(ii) Each State agency shall develop a NOE. A model form (Form FCS–439) is available from FCS. The NOE must contain the following:

(A) The date the certification period expires;

(B) The date by which a household must submit an application for recertification in order to receive uninterrupted benefits;

(C) The consequences of failure to apply for recertification in a timely manner;

(D) Notice of the right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address;

(E) Information on alternative submission methods available to households which cannot come into the certification office or do not have an authorized representative and how to exercise these options;

(F) The address of the office where the application must be filed;

(G) The household's right to request a fair hearing if the recertification is denied or if the household objects to the benefit issuance;

(H) Notice that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration;

(I) Notice that failure to attend an interview may result in delay or denial of benefits; and

(J) Notice that the household is responsible for rescheduling a missed interview and for providing required verification information.

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter, and a statement of needed verification required by §273.2(c)(5) with the NOE.

(2) *Application form.* (i) The State agency shall provide each household with an application form to obtain all information needed to determine eligibility and benefits for a new certification period. The State agency may use either its regular application as defined in §273.2(b) or a special recertification form. The recertification form can only be used by households which are applying for recertification before the end of their current certification period. Recertification forms must be approved by FCS as required by §273.2(b)(3). Recertification forms used for joint food stamps/SSI processing must be approved by SSA in accordance with §273.2(k)(1)(i)(B). The recertification form must elicit from the household sufficient information regarding household composition, income and resources that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The information required by §273.2(b)(1)(i),(b)(1)(ii), (b)(1)(iii), (b)(1)(iv) and (b)(1)(v) must be included on the recertification form. The information regarding the Income and Eligibility Verification System in §273.2(b)(2) may be provided on a separate form. A combined form for PA and GA households may be used in accordance with §273.2(j). Monthly reporting households shall be recertified as provided in §273.21(q). State agencies may

use the same form for households required to report changes in circumstances and monthly reporting households.

(ii) The State agency may request that the household bring the application form to the interview or return the form by a specified date (not less than 15 days after receipt of the form).

(3) *Interview*. (i) As part of the recertification process, the State agency shall conduct a face-to-face interview with a member of each household. The face-to-face interview may be waived in accordance with § 273.2(e). The State agency may also waive the face-to-face interview for a household that has no earned income if all of its members are elderly or disabled. The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. However, a household that requests a face-to-face interview must be granted one.

(ii) If a household receives PA/GA and will be recertified for food stamps more than once in a 12-month period, the State agency may choose to conduct a face-to-face interview with that household only once during that period. The face-to-face interview shall be conducted at the same time that the household receives a face-to-face interview for PA/GA purposes. At any other recertification during that year period, the State agency may interview the household by telephone, conduct a home visit, or recertify the household by mail.

(iii) The State agency may schedule the interview prior to the application filing date, provided that the household's application is not denied at that time for failure to appear for the interview. The State agency shall schedule the interview on or after the date the application was filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview. State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires.

(4) *Verification*. Information provided by the household shall be verified in accordance with § 273.2(f)(8)(i). The State agency shall provide the household a notice of required verification as provided in § 273.2(c)(5) and notify the household of the date by which the verification requirements must be satisfied. The household must be allowed a minimum of 10 days to provide required verification information. Any household whose eligibility is not determined by the end of its current certification period due to the time period allowed for submitting any missing verification shall receive an opportunity to participate, if eligible, within 5 working days after the household submits the missing verification.

(c) *Timely application for recertification*. (1) Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the NOE is received to file a timely application for recertification.

(2) Other households reporting required changes in circumstances that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

(3) For monthly reporting households, the filing deadline shall be either the 15th of the last month of the certification period or the normal date for filing a monthly report, at the State agency's option. The option chosen must be uniformly applied to the State agency's entire monthly reporting caseload.

(4) For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices in accordance with § 273.2(k)(1), an application shall be considered filed for normal processing purposes when the signed application is received by the SSA.

(d) *Timely processing*. (1) Households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures shall be notified of their eligibility or ineligibility. Eligible households shall be provided an opportunity

to receive benefits no later than 30 calendar days after the date the household received its last allotment.

(2) Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. In addition, the State agency shall provide households that are determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

(e) *Delayed processing.* (1) *Delays caused by the State agency.* Households which have submitted an application for recertification in a timely manner but, due to State agency error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate upon being determined eligible, and the allotment shall not be prorated. If the household was unable to participate for the month following the expiration of the certification period because of State agency error, the household is entitled to restored benefits.

(2) *Delays caused by the household.* (i) If a household does not submit a new application by the end of the certification period, the State agency must close the case without further action.

(ii) If a recertification form is submitted more than one month after the timely filing deadline, it shall be treated the same as an application for initial certification. In accordance with §273.10(a)(1)(ii), the household's benefits shall not be prorated unless there has been a break of more than one month in the household's certification.

(iii) A household which submits an application by the filing deadline but does not appear for an interview scheduled after the application has been filed, or does not submit verification within the required timeframe, loses its right to uninterrupted benefits. The State agency has three options for handling such cases:

(A) Send the household a denial notice as soon as the household either fails to appear for an interview or fails to submit verification information within the required timeframe. If the interview is completed, or the household provides the required verification information within 30 days of the date of application and is determined eligible, the household must be reinstated and receive benefits within 30 calendar days after the application was filed or within 10 days of the date the interview is completed or required verification information is provided, whichever is later. In no event shall a subsequent period's benefits be provided before the end of the current certification period.

(B) Deny the household's recertification application at the end of the last month of the current certification period. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate the households without requiring new applications if the households have been interviewed and have provided the required verification information within 30 days after the applications have been denied.

(C) Deny the household's recertification request 30 days after application. The State agency may on a Statewide basis either require households to submit new applications to continue benefits or reinstate households without requiring new applications if such households have been interviewed and have provided the required verification within 30 days after the applications have been denied.

(f) *Expedited service.* A State agency is not required to apply the expedited service provisions of §273.2(i) at recertification if the household applies for recertification before the end of its current certification period.

[Amdt. 364, 61 FR 54318, Oct. 17, 1996]

EFFECTIVE DATE NOTE: At 61 FR 54318, Oct. 17, 1996, §278.14(b)(2) was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. The Food and Consumer Service will publish a document in the FEDERAL REGISTER announcing the effective date.

§273.15 Fair hearings.

(a) *Availability of hearings.* Except as provided in §271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of

the State agency which affects the participation of the houshold in the Program.

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits the household to further appeal a local decision to a State level fair hearing. State agencies may adopt local level hearings in some project areas and maintain only State level hearings in other project areas.

(c) *Timely action on hearings*—(1) *State level hearings.* Within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. Decisions which result in an increase in household benefits shall be reflected in the coupon allotment within 10 days of the receipt of the hearing decision even if the State agency must provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. However, the State agency may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

(2) *Local level hearings.* Within 45 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(3) *Appeals of local level decisions.* Within 45 days of receipt of any request for a State level review of a decision or for a new State level hearing, the State agency shall assure that the review or the new hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(4) *Household requests for postponement.* The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

(d) *Agency conferences.* (1) The State agency shall offer agency conferences to households which wish to contest a denial of expedited service under the procedures in § 273.2(i). The State agency may also offer agency conferences to households adversely affected by an agency action. The State agency shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

(2) An agency conference for households contesting a denial of expedited service shall be scheduled within 2 working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(e) *Consolidated hearings.* State agencies may respond to a series of individual requests for hearings by conducting a single group hearing. State agencies may consolidate only cases where individual issues of fact are not disputed and where related issues of State and/or Federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have its case presented by a representative.

(f) *Notification of right to request hearing.* At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by

a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the State agency that it disagrees with a State agency action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service.

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. Action by the State agency shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

(h) *Request for hearing.* A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(i) *State agency responsibilities on hearing requests.* (1) Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the request speaks a language other than English and the State agency is required by § 272.4(c)(3) to provide bilingual staff or interpreters who speak the appropriate language, the State agency shall insure that the hearing procedures are verbally explained in that language. Upon request, the State agency shall also help a household with its hearing request. If a household makes an oral request for a hearing, the State agency shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and a restoration of benefits if the decision so indicates before they leave the area.

(3) The State agency shall publish clearly written uniform rules of procedure that conform to these regulations and shall make the rules available to any interested party. At a minimum, the uniform rules of procedure shall include the time limits for hearing requests as specified in paragraph (g) of this section, advance notification requirements as specified in paragraph (i)(1) of this section, hearing timeliness standards as specified in paragraph (c) of this section, and the rights and responsibilities of persons requesting a hearing as specified in paragraph (p) of this section.

(j) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in paragraph (g) of this section;

(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.

(k) *Continuation of benefits.* (1) If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in § 273.13, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. The form for requesting a fair hearing shall contain space for the household to indicate whether

or not continued benefits are requested. If the form does not positively indicate that the household has waived continuation of benefits, the State agency shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances. If a hearing request is not made within the period provided by the notice of adverse action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the State agency shall reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted by the State agency.

(2) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

(3) The State agency shall promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(l) *Notification of time and place of hearing.* The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or its representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

(m) *Hearing official.* Hearings shall be conducted by an impartial official(s) who: Does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the eligibility worker who took the action. State level hearings shall be conducted by State level personnel and shall not be conducted by local level personnel.

(1) *Designation of hearing official.* The hearing official shall be:

(i) An employee of the State agency;

(ii) An individual under contract with the State agency;

(iii) An employee of another public agency designated by the State agency to conduct hearings;

(iv) A member or official of a statutory board or other legal entity designated by the State agency to conduct hearings; or

(v) An executive officer of the State agency, a panel of officials of the State agency or a person or persons expressly appointed to conduct State level hearings or to review State and/or local level hearing decisions.

(2) *Power and duties.* The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Insure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;

(vi) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the State agency, in accordance with paragraph (q) of this section, which will resolve the dispute.

(n) *Hearing authority.* The hearing authority shall be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority shall be subject to the requirements specified in paragraph (m) of this section.

(o) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space limitations exist.

(p) *Household rights during hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(q) *Hearing decisions.* (1) Decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with § 272.1(f). This record shall also be available to the household or its representative at any reasonable time for copying and inspection.

(2) A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

(3) The household and the local agency shall each be notified in writing of: The decision; the reasons for the decision in accordance with paragraph (q)(2) of this section; the available appeal rights; and that the household's benefits will be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision. The following are additional notice requirements and the available appeal rights:

(i) After a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the decision. In addition, in States which provide for rehearings of State level decisions, the household shall be notified of the right to pursue a rehearing.

(ii) After a local level hearing decision which upholds the State agency action, the household shall be notified of the right to request a completely new State agency level hearing, and that a reversal of the decision may result in the restoration of lost benefits to the household. In addition, the household shall be advised that if a new hearing would pose an inconvenience to the household, a State level review of the decision based on the hearing record may be requested instead of a new hearing. A clear description of the two appeal procedures must be included to enable the household to make an informed choice, if it wishes to appeal. If the household indicates that it wishes to appeal, but does not select the method, the State agency shall proceed with a new State level hearing.

(4) If the household wishes to appeal a local level hearing decision, the appeal request must be filed within 15 days of the mailing date of the hearing decision notice. Within 45 days of receipt of any request for a State level review of the decision or for a new State level hearing, the State agency shall assure that the review or the hearing is conducted, and that a decision is reached and reflected in the coupon allotment. If a new hearing will not be held, the State level hearing official will review the local level hearing record to determine if the local decision was supported by substantial evidence. State level review procedures shall provide for notifying the local agency and the household that each may file a summary of arguments which shall become a part of the record if timely received. Both parties shall be advised that failure to file a summary will not be considered in deciding the case and that the summary must be postmarked within 10 days of receipt of the notice.

(5) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 272.1(c), and provided identifying names and addresses of household members and other members of the public are kept confidential.

(r) *Implementation of local level hearing decision.* (1) In the event the local hearing decision upholds the State agency action, any benefits to the household which were continued pending the hearing shall be discontinued beginning with the next scheduled issuance, regardless of whether or not an appeal is filed. Collection action for any claims against the household for overissuances shall be postponed until the 15-day appeal request period has elapsed, or if an appeal is requested, until the State agency upholds the decision of the local hearing authority.

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45-day time limit allowed for local hearing procedures. Any lost benefits due to the household shall be issued as soon as administratively feasible. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household

or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(s) *Implementation of final State agency decisions.* The State agency is responsible for insuring that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in paragraph (c) of this section.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with §273.17. The State agency shall restore benefits to households which are leaving the project area before the departure whenever possible. If benefits are not restored prior to the household's departure, the State agency shall forward an authorization to the benefits to the household or to the new project area if this information is known. The new project area shall accept an authorization and issue the appropriate benefits whether the notice is presented by the household or received directly from another project area.

(2) When the hearing authority upholds the State agency's action, a claim against the household for any overissuances shall be prepared in accordance with §273.18.

(t) *Review of appeals of local level decisions.* State agencies which adopt a local level hearing system shall establish a procedure for monitoring local level hearing decisions. The number of local level decisions overturned upon appeal to a State level hearing shall be examined. If the number of reversed decisions is excessive, the State agency shall take corrective action.

(u) *Departmental review of decisions contrary to Federal law and regulations.* [Reserved]

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33385, June 8, 1979; Amdt. 146, 46 FR 1427, Jan. 6, 1981; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994]

§273.16 Disqualification for intentional Program violation.

(a) *Administrative responsibility.* (1) The State agency shall be responsible for investigating any case of alleged intentional Program violation, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings or referral to a court of appropriate jurisdiction in accordance with the procedures outlined in this section. Administrative disqualification procedures or referral for prosecution action should be initiated by the State agency in cases in which the State agency has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of intentional Program violation as defined in paragraph (c) of this section. If the State agency does not initiate administrative disqualification procedures or refer for prosecution a case involving an overissuance caused by a suspected act of intentional Program violation, the State agency shall take action to collect the overissuance by establishing an inadvertent household error claim against the household in accordance with the procedures in §273.18. The State agency should conduct administrative disqualification hearings in cases in which the State agency believes the facts of the individual case do not warrant civil or criminal prosecution through the appropriate court system, in cases previously referred for prosecution that were declined by the appropriate legal authority, and in previously referred cases where no action was taken within a reasonable period of time and the referral was formally withdrawn by the State agency. The State agency shall not initiate an administrative disqualification hearing against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of appropriate jurisdiction, if the factual issues of the case arise out of the same, or related, circumstances. The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual. For those

persons not currently certified to participate in the Program at the time of the administrative disqualification or court decision, the disqualification period shall take effect immediately after the individual applies for and is determined eligible for Program benefits.

(2) Each State agency shall establish a system for conducting administrative disqualifications for intentional Program violation which conforms with the procedures outlined in paragraph (e) of this section. FCS shall exempt any State agency from the requirement to establish an administrative disqualification system if the State agency has already entered into an agreement, pursuant to paragraph (g)(1) of this section, with the State's Attorney General's Office or, where necessary, with county prosecutors. FCS shall also exempt any State agency from the requirement to establish an administrative disqualification system if there is a State law that requires the referral of such cases for prosecution and if the State agency demonstrates to FCS that it is actually referring cases for prosecution and that prosecutors are following up on the State agency's referrals. FCS may require a State agency to establish an administrative disqualification system if it determines that the State agency is not promptly or actively pursuing suspected intentional Program violation claims through the courts.

(3) The State agency shall base administrative disqualifications for intentional Program violations on the determinations of hearing authorities arrived at through administrative disqualification hearings in accordance with paragraph (e) of this section or on determinations reached by courts of appropriate jurisdiction in accordance with paragraph (g) of this section. However, any State agency has the option of allowing accused individuals either to waive their rights to administrative disqualification hearings in accordance with paragraph (f) of this section or to sign disqualification consent agreements for cases of deferred adjudication in accordance with paragraph (h) of this section. Any State agency which chooses either of these options may base administrative disqualifications for intentional Program violation on the waived right to an administrative disqualification hearing or on the signed disqualification consent agreement in cases of deferred adjudication.

(b) *Disqualification penalties.* (1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of six months for the first intentional Program violation, except as provided under paragraphs (b)(2) and (b)(3) of this section;

(ii) For a period of twelve months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2) and (b)(3) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twelve months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received coupons in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) or (b)(3) of this section.

(5) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2) or (b)(3) of this section unless it is contrary to the court order.

(6) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(7) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(8) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(9) Even though only the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims shall be established and collected in accordance with the procedures set forth in § 273.18.

(c) *Definition of intentional Program violation.* For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional Program violation, intentional Program violations shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

(d) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for intentional Program violation each time it applies for Program benefits. The penalties shall be in clear, prominent, and boldface lettering on the application form.

(e) *Disqualification hearings.* The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.

(1) *Consolidation of administrative disqualification hearing with fair hearing.* The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

(2) *Disqualification hearing procedures.* (i) State agencies have the option of using the same hearing officials for disqualification hearings and fair hearings or designating hearing officials to conduct only disqualification hearings.

(ii) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for disqualification hearings.

(iii) At the disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and notify the household member and local agency of the decision. The

household member or representative is entitled to a postponement of the scheduled hearing, provided that the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. However, the hearing shall not be postponed for more than a total of 30 days and the State agency may limit the number of postponements to one. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for disqualification hearings, and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the individual suspected of committing an intentional Program violation at least 30 days in advance of the date a disqualification hearing initiated by the State agency has been scheduled. If mailed, the notice shall be sent either first class mail or certified mail-return receipt requested. The notice may also be provided by any other reliable method. If the notice is sent using first class mail and is returned as undeliverable, the hearing may still be held.

(ii) If no proof of receipt is obtained, a timely (as defined in paragraph (e)(4) of this section) showing of nonreceipt by the individual due to circumstances specified by the State agency shall be considered good cause for not appearing at the hearing. Each State agency shall establish the circumstances in which non-receipt constitutes good cause for failure to appear. Such circumstances shall be consistent throughout the State agency.

(iii) The notice shall contain at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the State agency if the individual fails to appear at the hearing;

(E) A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(F) A warning that a determination of intentional Program violation will result in disqualification periods as determined by paragraph (b) of this section, and a statement of which penalty the State agency believes is applicable to the case scheduled for a hearing;

(G) A listing of the individual's rights as contained in § 273.15(p);

(H) A statement that the hearing does not preclude the State or Federal Government from prosecuting the individual for the intentional Program violation in a civil or criminal court action, or from collecting any overissuance(s); and

(I) If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

(iv) A copy of the State agency's published hearing procedures shall be attached to the 30-day advance notice or the advance notice shall inform the individual of his/her right to obtain a copy of the State agency's published hearing procedures upon request.

(v) Each State agency shall develop an advance notice form which contains the information required by this section.

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional Program violation. If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional Program violation but a hearing official later determines that the household member

or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. In instances where good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice as specified in paragraph (e)(3)(ii) of this section, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

(5) *Participation while awaiting a hearing.* A pending disqualification hearing shall not affect the individual's or the household's right to be certified and participate in the Program. Since the State agency cannot disqualify a household member for intentional Program violation until the hearing official finds that the individual has committed intentional Program violation, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the misstatement or action for which the household member is suspected of intentional Program violation does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of intentional Program violation and the resulting disqualification hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved an intentional act of Program violation.

(6) *Criteria for determining intentional Program violation.* The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section.

(7) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FCS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Imposition of disqualification penalties.* (i) If the hearing authority rules that the household member has committed intentional Program violation, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) on this section beginning with the first month which follows the date the household member receives written notification of the hearing decision. However, if the act of intentional Program violation which led to the disqualification occurred prior to notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an adverse State level hearing. The determinaton of intentional Program violation made by a disqualification hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be

subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualifed member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(9) *Notification of hearing decision.* (i) If the hearing official finds that the household member did not commit intentional Program violation, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the hearing official finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. In addition, the notice shall inform the household member of the date the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for Program benefits. The State agency shall also provide written notice to the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(iii) Each State agency shall develop a form for notifying individuals that they have been found by an administrative disqualification hearing to have committed intentional Program violation. The form shall contain the information required by this section.

(10) *Local level hearings.* (i) The State agency may choose to provide administrative disqualification hearings at the local level in some or all of its project areas with a right to appeal to a State level hearing. If a local level disqualification hearing determines that a household member committed intentional Program violation, the notification of hearing decision described in paragraph (e)(9) of this section shall also inform the household member of the right to appeal the decision within 15 days after the receipt of the notice, the date the disqualification will take effect unless a State level hearing is requested, and that benefits will be continued pending a State level hearing if the household is otherwise eligible. If the household member appeals the local level decision, the advance notice of hearing, as described in paragraph (e)(3) of this section, shall be provided at least 10 days in advance of the scheduled State level hearing and shall also inform the household member that the local hearing decision will be upheld if the household or its representative fails to appear for the hearing without good cause. When a local level decision is appealed, the State agency shall conduct the State level hearing, arrive at a decision, and notify the household member and local agency of the decision within 60 days of the date the household member appealed its case. The prior decision shall not be taken into consideration by the State hearing officer in making the final determination. In all other respects, local level disqualification hearings shall be handled in accordance with the procedures specified in this section for State level hearings.

(ii) The State agency shall develop appropriate forms which contain the information required by this section for notification of a local level hearing

decision and advance notice of a scheduled State level hearing for appeal of a local level decision.

(f) *Waived hearings.* Each State agency shall have the option of establishing procedures to allow accused individuals to waive their rights to an administrative disqualification hearing. For State agencies which choose the option of allowing individuals to waive their rights to an administrative disqualification hearing, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall provide written notification to the household member suspected of intentional Program violation that the member can waive his/her right to an administrative disqualification hearing. Prior to providing this written notification to the household member, the State agency shall ensure that the evidence against the household member is reviewed by someone other than the eligibility worker assigned to the accused individual's household and a decision is obtained that such evidence warrants scheduling a disqualification hearing.

(ii) The written notification provided to the household member which informs him/her of the possibility of waiving the administrative disqualification hearing shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency to avoid the holding of a hearing and a signature block for the accused individual, along with a statement that the head of household must also sign the waiver if the accused individual is not the head of household, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s), and that anything said or signed by the individual concerning the charge(s) can be used against him/her in a court of law;

(C) The fact that a waiver of the disqualification hearing will result in disqualification and a reduction in benefits for the period of disqualification, even if the accused individual does not admit to the facts as presented by the State agency;

(D) An opportunity for the accused individual to specify whether or not he/she admits to the facts as presented by the State agency. This opportunity shall consist of the following statements, or statements developed by the State agency which have the same effect, and a method for the individual to designate his/her choice:

(*1*) I admit to the facts as presented, and understand that a disqualification penalty will be imposed if I sign this waiver; and

(*2*) I do not admit that the facts as presented are correct. However, I have chosen to sign this waiver and understand that a disqualification penalty will result;

(E) The telephone number and, if possible, the name of the person to contact for additional information; and

(F) The fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim.

(iii) The State agency shall develop a waiver of right to an administrative disqualification hearing form which contains the information required by this section as well as the information described in paragraph (e)(3) of this section for advance notice of a hearing. However, if the household member is notified of the possibility of waiving his/her right to an administrative disqualification hearing before the State agency has scheduled a hearing, the State agency is not required to notify the household member of the date, time and place of the hearing at that point as required by paragraph (e)(3)(i)(A) of this section.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the waiver of right to an administrative disqualification hearing and the signed waiver is received within the timeframes specified by the State agency, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section. The period of disqualification shall begin with the first month which follows the date the household member receives written notification of the disqualification.

However, if the act of intentional Program violation which led to the disqualification occurred prior to the written notification of the disqualification periods specified in paragraph (b) of this section, the household member shall be disqualified in accordance with the disqualification periods in effect at the time of the offense. The same act of intentional Program violation repeated over a period of time shall not be separated so that separate penalties can be imposed.

(ii) No further administrative appeal procedure exists after an individual waives his/her right to an administrative disqualification hearing and a disqualification penalty has been imposed. The disqualification penalty cannot be changed by a subsequent fair hearing decision. The household member, however is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

(iii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iv) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification*. The State agency shall provide written notice to the household member prior to disqualification. The State agency shall also provide written notice to any remaining household members of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The notice(s) shall conform to the requirements for notification of a hearing decision specified in paragraph (e)(9) of this section. A written demand letter for restitution, as described in § 273.18(d)(3), shall also be provided.

(4) *Waiver of hearing at local level.* Any State agency which has adopted the two-tiered approach for administrative disqualification hearings may also provide for waiver of the right to disqualification hearing procedures outlined in this section.

(g) *Court referrals.* Any State agency exempted from the requirement to establish an administrative disqualification system in accordance with paragraph (a) of this section shall refer appropriate cases for prosecution by a court of appropriate jurisdiction in accordance with the requirements outlined in this section.

(1) *Appropriate cases.* (i) The State agency shall refer cases of alleged intentional Program violation for prosecution in accordance with an agreement with prosecutors or State law. The agreement shall provide for prosecution of intentional Program violation cases and include the understanding that prosection will be pursued in cases where appropriate. This agreement shall also include information on how, and under what circumstances, cases will be accepted for possible prosecution and any other criteria set by the prosecutor for accepting cases for prosecution, such as a minimum amount of overissuance which resulted from intentional Program violation.

(ii) State agencies are encouraged to refer for prosecution under State or local statutes those individuals suspected of committing intentional Program violation, particularly if large amounts of food stamps are suspected of having been obtained by intentional Program violation, or the individual is suspected of committing more than one act of intentional Program violation. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourage State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to

any other civil or criminal penalties for such violations.

(2) *Imposition of disqualification penalties.* (i) State agencies shall disqualify an individual found guilty of intentional Program violation for the length of time specified by the court. If the court fails to impose a disqualification period, the State agency shall impose a disqualification period in accordance with the provisions in paragraph (b) of this section, unless contrary to the court order. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period for currently eligible individuals within 45 days of the date the disqualification was ordered. Any other court-imposed disqualification shall begin within 45 days of the date the court found a currently eligible individual guilty of civil or criminal misrepresentation or fraud.

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the court finds that the household member committed intentional Program violation, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(h) *Deferred adjudication.* Each State agency shall have the option of establishing procedures to allow accused individuals to sign disqualification consent agreements for cases of deferred adjudication. State agencies are encouraged to use this option for those cases in which a determination of guilt is not obtained from a court due to the accused individual having met the terms of a court order or which are not prosecuted due to the accused individual having met the terms of an agreement with the prosecutor. For State agencies which choose the option of allowing individuals to sign disqualification consent agreements in cases referred for prosecution, the procedures shall conform with the requirements outlined in this section.

(1) *Advance notification.* (i) The State agency shall enter into an agreement with the State's Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the household member of the consequences of consenting to disqualification in cases of deferred adjudication.

(ii) The written notification provided to the household member which informs him/her of the consequences of consenting to disqualification as a part of deferred adjudication shall include, at a minimum:

(A) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block.

(B) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not

found guilty of civil of criminal misrepresentation or fraud.

(C) A warning that the disqualification periods for intentional Program violations under the Food Stamp Program are as specified in paragraph (b) of this section, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(D) A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

(iii) The State agency shall develop a disqualification consent agreement, or language to be included in the agreements reached between the prosecutors and accused individuals or in the court orders, which contains the information required by this section for notifying a household member suspected of intentional Program violation of the consequences of signing a disqualification consent agreement.

(2) *Imposition of disqualification penalties.* (i) If the household member suspected of intentional Program violation signs the disqualification consent agreement, the household member shall be disqualified in accordance with the disqualification periods specified in paragraph (b) of this section, unless contrary to the court order. The period of disqualification shall begin within 45 days of the date the household member signed the disqualification consent agreement. However, if the court imposes a disqualification period or specifies the date for initiating the disqualification period, the State agency shall disqualify the household member in accordance with the court order.

(ii) If the individual is not certified to participate in the Program at the time the disqualification period is to begin, the period shall take effect immediately after the individual applies for and is determined eligible for benefits.

(iii) Once a disqualification penalty has been imposed against a currently participating household member, the period of disqualification shall continue uninterrupted until completed regardless of the eligibility of the disqualified member's household. However, the disqualified member's household shall continue to be responsible for repayment of the overissuance which resulted from the disqualified member's intentional Program violation regardless of its eligibility for Program benefits.

(3) *Notification of disqualification.* If the household member suspected of intentional Program violation signs the disqualification consent agreement, the State agency shall provide written notice to the household member. The notice shall be provided prior to disqualification, whenever possible. The notice shall inform the household member of the disqualification and the date the disqualification will take effect. The State agency shall also provide written notice to the remaining household members, if any, of the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11(c). In addition, the State agency shall provide the written demand letter for restitution described in § 273.18(d)(3).

(i) *Reporting requirements.* (1) Each State agency shall report to FCS information concerning individuals disqualified for intentional Program violation, including those individuals disqualified based on the determination of an administrative disqualification hearing official or a court of appropriate jurisdiction and those individuals disqualified as a result of signing either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases referred for prosecution. This information shall be submitted to FCS so that it is received no later than 30 days after the date the disqualification took effect, or would have taken effect for a currently ineligible individual whose disqualification is pending future eligibility.

(2) Each State agency shall report information concerning each individual disqualified for intentional Program violation in a format designed by FCS. This format shall include the individual's social security number, date of

birth, and full name, the number of the disqualification (1st, 2nd, or 3rd), the State and county in which the disqualification took place, the date on which the disqualification took effect, and the length of the disqualification period imposed.

(3) Each State agency shall submit the required information on each individual disqualified for intentional Program violation through a reporting system in accordance with procedures specified by FCS.

(4) All the data submitted by State agencies will be available for use by any State Welfare Agency.

(i) State agencies shall, at a minimum, use the data for the following:

(A) To determine the eligibility of individual Program applicants prior to certification in cases where the State agency has reason to believe a household member is subject to disqualification in another political jurisdiction, and

(B) To ascertain the appropriate penalty to impose, based on past disqualifications, in a case under consideration.

(ii) State agencies may also use the data in other ways, such as the following:

(A) To screen all program applicants prior to certification, and

(B) To periodically match the entire list of disqualified individuals against their current caseloads.

(5) The disqualification of an individual for intentional Program violation in one political jurisdiction shall be valid in another. However, one or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration, regardless of where the disqualification(s) took place. State agencies are required to identify any individuals disqualified for fraud prior to implementation of this rule and to submit the information required by this section on such individuals.

(6) In cases where the imposition of a disqualification penalty is being held pending the future eligibility of a household member found to have committed intentional Program violation, the State agency shall submit a report revising the original disqualification report once the individual begins the period of disqualification in accordance with instructions provided by FCS.

(7) In cases where the disqualification for intentional Program violation is reversed by a court of appropriate jurisdiction, the State agency shall submit a report to purge the file of the information relating to the disqualification which was reversed in accordance with instructions provided by FCS.

(j) *Reversed disqualifications.* In cases where the determination of intentional program violation is reversed by a court of appropriate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore benefits that were lost as a result of the disqualification in accordance with the procedures specified in §273.17(e).

[Amdt. 242, 48 FR 6855, Feb. 15, 1983, as amended by Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 357, 60 FR 43515, Aug. 22, 1995]

§273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(i) The date the State agency receives a request for restoration from a household; or

(ii) The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

(2) The State agency shall restore to households benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient

has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a State agency action, the benefits shall be restored for a period of not more than twelve months from the first of the following dates:

(i) The date the State agency receives a request for restoration:

(ii) If no request for restoration is received, the date the fair hearing action was initiated; but

(iii) Never more than one year from when the State agency is notified of, or discovers, the loss.

(3) Benefits shall be restored even if the household is currently ineligible.

(b) *Errors discovered by the State agency.* If the State agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the State agency shall automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits shall not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(c) *Disputed benefits.* (1) If the State agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the State agency or any other action taken by the State agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the case file, does not agree, the household has 90 days from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored.* After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12-month time limits described in paragraphs (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows:

(1) If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period.

(ii) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures in § 273.2(h).

(iii) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.

(iv) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first

month the household is found ineligible.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, the State agency shall advise the household of what information must be provided to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively.

(e) *Lost benefits to individuals disqualified for intentional Program violation*. Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of State agency notification, only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action. For each month the individual was disqualified, not to exceed twelve months prior to State agency notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

(f) *Method of restoration*. Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition*. Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures*. Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to

readily identify those situations where a claim against a household can be used to offset the amount to be restored.

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 225, 48 FR 16831, Apr. 19, 1983; Amdt. 314, 54 FR 24518, June 7, 1989; Amdt. 356, 59 FR 29713, June 9, 1994]

§ 273.18 Claims against households.

(a) *Establishing claims against households.* All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by:

(i) A misunderstanding or unintended error on the part of the household;

(ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance or general assistance provided a claim can be calculated based on a change in net income and/or household size.

(3) *Intentional Program violation claims.* A claim shall be handled as an intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in § 273.16(c), or an individual is disqualified as a result of signing either a waiver of his/her disqualification hearing as discussed in § 273.16(f) or a disqualification consent agreement in cases referred for prosecution as discussed in § 273.16(h). Prior to the determination of intentional Program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred adjudication, the claim against the household shall be handled as an inadvertent household error claim.

(b) *Criteria for establishing inadvertent household and administrative error claims.* The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elasped between the month an overissuence occurred and the month the State agency discovered a specific case involving an overissuance. The State agency may choose to take action on those claims for which more than 12 months have elasped. However, the State agency shall not take action on claims for which more than six years have elasped between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

(1) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

(i) The household unintentionally failed to provide the State agency with correct or complete information;

(ii) The household unintentionally failed to report to the State agency changes in its household circumstances; or

(iii) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits.

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA, or GA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2) Instances of administrative error which may result in a claim include, but are not limited to, the following:

(i) A State agency failed to take prompt action on a change reported by the household;

(ii) A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

(iii) A State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted;

(iv) The State agency continued to provide household food stamp allotments after its certification period had expired without benefit of a reapplication determination; or

(v) The State agency failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed.

(vi) An agency of the State or local government took an action or failed to take an appropriate action, which resulted in the household improperly receiving PA or GA.

(3) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overissuance occurred as a result of the following:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form,

(B) Completed a current work registration form, or

(C) Was certified in the correct project area;

(ii) The household transacted an expired ATP, unless the household altered its ATP.

(c) *Calculating the amount of claims*—(1) *Inadvertent household and administrative error claims.* (i) For each month that a household received an overissuance due to an inadvertent household or administrative error, the State agency shall determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered. The State agency may choose to calculate the amount of the claim back to the month the inadvertent household or administrative error occurred, regardless of the length of time that elapsed until the inadvertent household or administrative error was discovered. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(B) If the household timely reported a change, but the State agency did not act on the change within the required timeframes, the first month affected by the State's failure to act shall be the first month the State agency would have made the change effective had it timely acted. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the State agency shall assume for the purpose of calculating the claim that the maximum advance notice period as provided in § 273.13(a)(1)

would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

(iii) After calculating the amount of the inadvertent household or administrative error claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(2) *Intentional Program violation claims.* (i) For each month that a household received an overissuance due to an act of intentional Program violation, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional Program violation claim shall be calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, the State agency shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered. If the household member is determined to have committed intentional Program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the State agency determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. In calculating IPV claims involving unreported earned income, the State agency shall not apply the earned income deduction specified in § 273.9(d)(2) to that part of any earned income which a household willfully or fraudulently failed to report in a timely manner as determined by one of the disqualification procedures specified in § 273.16, which are: an administrative disqualification hearing; a waiver to such a hearing; a court order; or a deferred adjudication.

(iii) Once the amount of the intentional Program violation claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(d) *Collecting claims against households*—(1) Criteria for initiating collection action on inadvertent household and administrative error claims.

(i) State agencies shall initiate collection action against the household on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the claim is less than $35, and the claim cannot be recovered by reducing the household's allotment. However, any State agency shall have the option to initiate collection action for other claims under $35 at such time that multiple overissuances for a household total $35 or more. If the State agency chooses this option, households shall be informed of this policy.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) The State agency may postpone collection action on inadvertent household error claims in cases where an overissuance is being referred for possible prosecution or for administrative

disqualification, and the State agency determines that collection action will prejudice the case.

(2) *Criteria for initiating collection action on intentional Program violation claims.* If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing official or a court of appropriate jurisdiction) or has signed either a waiver as discussed in § 273.16(f) or a consent agreement as discussed in § 273.16(h), the State agency shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The State agency shall initiate such collection unless the household has repaid the overissuance already, the State agency has documentation which shows the household cannot be located, or the State agency determines that collection action will prejudice the case against a household member referred for prosecution. The State agency shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation or fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the State agency shall request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecutor and accused individual.

(3) *Initiating collection on claims.* Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this paragraph. A model letter is available from FCS. If the claim was not established by a fair hearing, the State agency shall provide a notice of adverse action as part of or along with the demand letter, as specified in § 273.13. The notice of adverse action shall be sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after the effective date of these provisions a follow-up demand letter is sent on that claim. A one-time adverse action notice accompanying the original demand letter, or incorporated into it, which informs recipients they have 90 days to appeal the claim, satisfies the notice provisions.

(i) The demand letter shall inform the household of the amount owed, the reason for the claim, the period of time the claim covers, any offset which reduces the claim and how the household may pay the claim. If the amount of the claim was not established at a fair hearing, including one consolidated with an administrative disqualification hearing, the latter shall notify the household that it may request a fair hearing on the amount of the claim.

(ii) The demand letter shall advise the household of the availability of any individual or organization which provides households free legal representation.

(iii) For inadvertent household error claims, the first demand letter to a participating household shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, or timely requests a fair hearing and continued benefits, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after timely notice of such election or request is due to the State agency, as provided in § 273.12(c)(2) of this part.

(iv) For inadvertent household error claims, a demand letter provided to a participating household subsequent to a fair hearing which sustains the claim shall inform the household:

(A) That unless it elects a method of repayment and informs the State agency of its election within the time specified in paragraph (d)(4)(i) of this section, its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household about this matter;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued after timely notice of such election is due to the State agency, as provided in § 273.12(c)(2) of this part.

(v) For intentional Program violation claims, the first demand letter provided a participating household following the action which establishes the claim, as required in § 237.16 of this part, shall inform the household:

(A) That it must elect a method of repayment and inform the State agency of its election within the time specified in paragraph (d)(4)(ii) of this section, or its allotment will be reduced;

(B) How allotment reduction will affect household benefits, if the State agency has not otherwise informed the household;

(C) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election, as provided in § 273.12(c)(2) of this part; and

(D) That if the household fails to make a timely election, the reduction will begin with the first allotment issued 10 days after the date of the demand letter, as provided in § 273.12(c)(2) of this part.

(vi) If the State agency has implemented the intercept of unemployment compensation benefits as provided in paragraph (g)(3) of this section, the demand letter shall inform the household of this voluntary method of repayment of claims for intentional program violations.

(vii) If the State agency is required to use other means of collecting claims for intentional Program violations as specified in paragraph (d)(4)(iii) of this section, the letter shall inform the household of those other means and the circumstances in which they may be used by the State agency.

(viii) The demand letter shall inform the household of the availability of allotment reduction as a voluntary method of repayment of administrative error claims.

(ix) The demand letter shall inform a household against which the State agency has initiated collection action of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section in the event the household's economic circumstances change.

(x) The demand letter shall provide space for the household to indicate its preferred method of repayment and for the signature of a household member.

(4) *Further collection actions.* (i) *Inadvertent household error claims.* Participating households which are liable for inadvertent household error claims shall be deemed to have elected allotment reduction unless they notify the State agency of their choice of repayment method within 20 days of the date an initial demand letter, or a demand letter for payment following a fair hearing which sustains the claim, is mailed or otherwise delivered to them.

(ii) *Intentional Program violation claims.* Participating households which are liable for intentional Program violation claims shall elect a method of repayment on the date of receipt of the demand letter required in § 273.16(e)(9) and (g)(3) of this part (or if the date of receipt is not a business day, on the next business day) or be deemed to have elected allotment reduction. Each State agency shall determine a deadline for receipt of such elections for them to be considered timely. In no event shall that deadline exceed 10 days from the date the demand letter is mailed or otherwise delivered to liable households.

(iii) If any nonparticipating household or if any currently participating household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household has responded by paying or agreeing to pay the claim, until the criteria for suspending collection action specified in paragraph (e) of this section have been

met, or until the State agency initiates other collection actions.

(iv) The State agency shall pursue other means of collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any intentional program violation claim unless the State agency can determine that such other means are generally not cost effective. The State agency may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error or administrative error claim. If the State agency chooses to pursue other collection actions and the household pays the claim, payments shall be submitted to FCS in accordance with the procedures outlined in paragraph (h) of this section and the State agency's retention shall be based on the actual amount collected from the household through such collection actions.

(e) *Suspending and terminating collection of claims*—(1) *Suspending collection of inadvertent household and administrative error claims.* An inadvertent household or administrative error claim may be suspended if no collection action was initiated because of conditions specified in paragraph (d)(1)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a nonparticipating household or of any administrative error claim may be suspended when:

(i) The household cannot be located; or

(ii) The cost of further collection action is likely to exceed the amount that can be recovered.

(2) *Suspending collection of intentional Program violation claims.* The State agency may suspend collection action on intentional Program violation claims at any time if it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under $100, at least two demand letters for claims between $100 and $400, and at least three demand letters for claims of more than $400, further collection action of any intentional Program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.

(3) *Terminating collection of claims.* A claim may be determined uncollectible after it is held in suspense for 3 years. The State agency may use a suspended or terminated claim to offset benefits in accordance with § 273.17.

(f) *Change in household composition.* State agencies shall initiate collection action against any or all of the adult members of a household at the time an overissuance occurred. Therefore, if a change in household composition occurs, State agencies may pursue collection action against any household which has a member who was an adult member of the household that received the overissuance. The State agency may also offset the amount of the claim against restored benefits owed to any household which contains a member who was an adult member of the original household at the time the overissuance occurred. Under no circumstances may a State agency collect more than the amount of the claim. In pursuing claims, the State agency may use any of the appropriate methods of collecting payments in § 273.18(g).

(g) *Method of collecting payments.* As specified in paragraph (d) of this section, State agencies shall collect payments for claims against households as follows:

(1) *Lump sum.* (i) If the household is financially able to pay the claim at one time, the State agency shall collect a lump sum cash payment. However, the household shall not be required to liquidate all of its resources to make this one lump sum payment.

(ii) If the household is financially unable to pay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, the State agency shall accept this method of payment.

(iii) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the State agency shall accept this method of repayment.

(2) *Installments.* (i) The State agency shall negotiate a payment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments shall be accepted by the State agency in regular installments. The household may use food stamp coupons as full or partial payment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17.

(ii) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the State agency shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that it may contact the State agency to discuss renegotiation of the payment schedule. The notice shall also inform the household that unless the overdue payments are made or the State agency is contacted to discuss renegotiation of the payment schedule, the allotment of a currently participating household against which an inadvertent household error or intentional Program violation claim has been established may be reduced without a notice of adverse action.

(iii) If the household responds to the notice, the State agency shall take one of the following actions as appropriate:

(A) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

(B) If the household requests renegotiation, and if the State agency concurs with the request, negotiate a new payment schedule;

(C) If the household requests renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement, the State agency may continue renegotiation until a settlement can be reached. The State agency shall have the option to invoke allotment reduction against a currently participating household for repayment of an inadvertent household error or intentional Program violation claim if a settlement cannot be reached.

(iv) If a currently participating household against which an inadvertent household error or intentional Program violation claims has been established fails to respond to the notice, the State agency shall invoke allotment reduction. The State agency may also invoke allotment reduction if such a household responds by requesting renegotiation of the amount of its repayment schedule but the State agency believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If allotment reduction is invoked, no notice of adverse action is required.

(v) In cases where the household is currently participating in the program and a payment schedule is negotiated for repayment of an inadvertent household error or intentional Program violation claim, the State agency shall ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments shall remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both the State agency and the household shall have the option to initiate renegotiation of the payment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

(3) *Intercept of unemployment compensation benefits.* State agencies which have an approved attachment to their Plan of Operation permitting the intercept of unemployment compensation benefits for the collection of claims for intentional program violations may arrange for such intercept as provided in § 272.12. Collections made by such intercepts shall be treated as lump sum or installment payments as discussed in paragraph (g) (1) and (2) of this section.

(4) *Reduction in food stamp allotment.* State agencies shall collect payments for inadvertent household error claims and intentional Program violation claims from households currently participating in the program by reducing the household's food stamp allotments. State agencies shall collect payments for administrative error claims from households currently participating in the program by reducing the household's food stamp allotments if the household prefers to use this method of repayment. Prior to reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be recovered each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month), and of the availability of other methods of repayment. If the household requests to make a lump sum cash and/or food stamp coupon payment as full or partial payment of the claim, the State agency shall accept this method of payment. The State agency shall reduce the household's allotment to recover any amounts of an inadvertent household error or intentional Program violation claim not repaid through a lump sum cash and/or food stamp coupon payment, unless a payment schedule has been negotiated with the household. The provision for the minimum benefit for households with one and two members only, as described in § 273.10(e)(2)(ii)(C), shall apply to the allotment prior to reduction in accordance with this paragraph. If the full or remaining amount of the claim cannot be liquidated in 3 years, the State agency may compromise the claim by reducing it to an amount that will allow the household to make restitution within 3 years. A State agency may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with § 273.17. The amount of food stamps to be recovered each month through allotment reduction shall be determined as follows:

(i) *Inadvertent household error claims.* For inadvertent household error claims, the amount of food stamps shall be the greater of 10 percent of the household's monthly allotment *or* $10 per month.

(ii) *Administrative error claims.* For administrative error claims, the amount of food stamps to be recovered each month from a household choosing to use this method shall be negotiated with the household. Choice of this option is entirely up to the household and no household shall have its allotment reduced by an amount with which it does not agree for payment of an administrative error claim.

(iii) *Intentional Program violation claims.* For intentional Program violation claims, the amount of food stamps shall be the greater of 20 percent of the household's monthly entitlement *or* $10 per month.

(5) *Federal income tax refund offset program*—(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in Section 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal Salary Offset Program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households) and the requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly

established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is receiving neither regular voluntary payments nor regular, involuntary payments such as wage garnishment. Claims for which a State agency has been receiving regular payments under paragraph (g)(2) of this section are considered past due and legally enforceable if the individual does not respond to a notice of default as specified in paragraph (g)(2) of this section.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60-Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice. For offset year 1996, State agencies have the option of providing the 60-day notice specified in paragraph (g)(5)(iv) of this section or in paragraph (g)(5)(x) of this section. For offset year 1997 and subsequent years, State agencies shall provide the 60-day notice specified in paragraph (g)(5)(iv).

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement. This requirement shall not apply to State agencies which choose to use the 60-day specified in paragraph (g)(5)(x) of this section for offset year 1996.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided

the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* Except that the language set out in paragraph (g)(5)(iv)(C) of this section shall not be included in the notice for offset year 1996, the State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund. This charge will be approximately [the amount provided by FCS].

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals.

(E) Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments. To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this claim, including any charge for administrative costs, may still be collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under the Federal Income Tax Refund Offset Program.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims for which we have been receiving regular payments under current Food Stamp Program regulations are considered past due and legally enforceable if you did not respond to a notice of default.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review*. (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''Tax Offset Review.''

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*), and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs

(g)(5)(vi)(C), (g)(5)(vi)(D), and (g)(5)(vi)(E) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 31 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i) of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section as required by paragraph (i)(2) of this section.

(x) *Contents of the alternate 60-day notice.* As specified in paragraph (g)(5)(iii)(A) of this section, for offset year 1996 State agencies may use a 60-day notice specifying the following information:

(A) The State agency has records documenting that the individual, identified with his or her Social Security Number, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, and that the State agency has notified the individual about the claim and made prior collection efforts as required by the Food Stamp Program. The notice must also state that the claim is past due and legally enforceable.

(B) The Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Act of 1991, authorizes the Internal Revenue Service to deduct such debts from tax refunds, and the State agency intends to refer the claim for such deduction unless the individuals pays the claim within 60 days of the date of the notice, or makes other repayment arrangements acceptable to the State agency.

(C) Instructions about how to pay the claim, including the name, address and telephone number of an office, administrative unit or person in the State agency who can discuss the claim and the intended offset with the individual.

(D) The following information about requesting a review of the intended offset:

(*1*) The individual is entitled to request a review of the intended referral for offset;

(*2*) The State agency will not act on review requests which it receives later than 60 days after the date of the 60-day notice;

(*3*) Claims for which timely review requests have been received will not be referred for offset while under review;

(*4*) A review request must provide evidence or documentation why the individual believes that the claim is not past due or is not legally enforceable;

(*5*) A review request is not considered received until the State agency receives such evidence or documentation; and

(*6*) A review request must contain the individual's Social Security Number.

(E) The individual should contact the State agency if he or she believes that a bankruptcy proceeding prevents collection of the claim or if the claim has been discharged in bankruptcy.

(F) The individual may want to contact the Internal Revenue Service before filing his or her Federal income tax return if the individual is married, filing a joint return, and if his or her spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances the spouse may be entitled to receive his or her portion of any joint refund. False claims concerning such liability may subject individuals to legal action.

(G) All individuals are jointly and severally liable for overpayment of food stamps if they were adult household members when the food stamps were overissued.

(6) *Federal salary offset program*—(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense and the United States Postal Service. FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims

records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors

before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be reported as appropriate.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term ''debts'' shall further be defined to include recipient claims established according to this section; and the terms ''State agency'' and ''FCS'' shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

(h) *Retention rates.* The following retention rates shall apply for claims collected by the State agency, including the value of allotment reductions for the purpose of collecting claims but not allotment reductions due to disqualification:

(1) For amounts collected prior to October 1, 1990, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program violation claims collected;

(2) For amounts collected during the period October 1, 1990 through September 30, 1995, the State agency shall retain 10 percent of the value of inadvertent household error claims collected and 25 percent of the value of intentional Program violation claims collected;

(3) For amounts collected on or after October 1, 1995, the State agency shall retain 25 percent of the value of inadvertent household error claims collected and 50 percent of the value of intentional Program Violation claims collected;

(4) The State agency shall not retain any percentage of the value of administrative error claims collected.

(i) *Submission of payments.* (1) The State agency shall retain the value of funds collected for inadvertent household error, intentional Program violation, or administrative error claims rather than forwarding the payments to FCS. This amount includes the total

value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The State's grant and letter of credit will be established or amended on a quarterly basis to reflect the State agency's retention of the value of claims collected as specified in paragraph (h) of this section unless the State agency requests or has requested that payment be by check. The State agency may request that FCS accept checks from the State for FCS–209 amounts due FCS, or that FCS pay the State by check for FCS–209 amounts due the State. If the State agency fails to pay FCS the amount due as reported on the FCS–209, FCS shall offset the amount due from the State's letter of credit. For FCS–209 reporting purposes, State agencies shall calculate the retention amount using the appropriate rate specified in paragraph (h) of this section which is in effect during the reporting period for the report. For those claims collected in Fiscal Year 1990 or earlier for which adjustments are made and reported in Fiscal Year 1991 or 1992, States may request a correction to reflect the difference between the old, higher rate (paragraph (h)(1) of this section) which is applicable to those claims, and the new, lower rate (paragraph (h)(2) of this section) at which the adjustments to those claims were reported on the FCS–209. One request for correction for each of fiscal years 1991 and 1992 may be filed with FCS after the fiscal year, but no later than November 30, 1991, for Fiscal Year 1991 reporting and no later than November 30, 1992, for Fiscal Year 1992 reporting. The request must be in writing, must include appropriate verifying documentation, and must reflect the net effect of all increases and decreases resulting from the application of the old retention rate.

(2) Each State agency shall submit quarterly a Form FCS–209, Status of Claims Against Households, to detail the State's activities relating to claims against households. This report is due no later than 30 days after the end of each calendar year quarter and shall be submitted to FCS even if the State agency has not collected any payments. In addition to reporting the amount of funds recovered from inadvertent household error and intentional Program violation claims each quarter on Form FCS–209, the State agency shall also report these amounts on other letter of credit documents as required. In accounting for inadvertent household error and intentional Program violation claims collections, the State agency shall include cash or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits. However, the value of benefits not issued during periods of disqualification shall not be considered recovered allotments and shall not be used to offset an intentional Program violation claim. In addition, each State agency shall establish controls to ensure that officials responsible for intentional Program violation determinations will not benefit from the State share of recoveries.

(3) The State agency may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing offical or a court of appropriate jurisdiction that intentional Program violation was committed, or receiving from an individual either a signed waiver or consent agreement, at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, the State agency shall include a note in an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the additional amounts being retained on amounts already recovered as a result of the change in status of the claim.

(4) If a household has overpaid a claim, the State agency shall pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household shall be paid by whatever method the State agency deems appropriate considering the household's circumstances. Overpaid amounts of a claim which have previously been reported as collected via the FCS–209 and which have been repaid to the household shall be reported in the appropriate column on the FCS–209 for the quarter in which the repayment occurred. The amount

of the repayment shall be subtracted from the total amount collected. The appropriate retention rate shall be applied to the reduced collection total.

(5) In cases where FCS has billed a State agency for negligence, any amounts collected from households which were caused by the State's negligence will be credited by FCS. When submitting these payments, the State agency shall include a note as an attachment to the quarterly reporting form specified in paragraph (h)(2) of this section which shows the amount that should be credited against the State's bill.

(j) *Returned coupons.* If coupon books collected from households as payment for claims are returned intact and in usable form, the State agency may return them to coupon inventory. The State agency shall destroy any coupons or coupon books which are not returned to inventory in accordance with the procedures outlined in §274.7(f).

(k) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FCS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distribution of assets, to the same extent as FCS. Acting as FCS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FCS might have filed. Any amounts collected under this authority shall be transmitted to FCS as provided in paragraph (h) of this section.

(l) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods, used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payments on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FCS.

(5) Identify at certification household that owe outstanding payments on a previously issued claim determination. At the time the household is certified and receives an initial allotment (as specified at §273.17(d)(4)), the initial allotment, whether paid retroactively or prospectively, shall not be reduced to offset claims.

(m) *Interstate claims collection.* In cases where a household moves out of the area under a State agency's jurisdiction, the State agency should initiate or continue collection action against the household for any overissuance to the household which occurred while it was under the State agency's jurisdiction. The State agency which overissued benefits to the household shall have the first opportunity to collect any overissuance. However, if the State agency which overissued benefits to the household does not take prompt action to collect, then the State agency which administers the area into which the household moves should initiate action to collect the overissuance. Prior to initiating action to collect such overissuances, the State agency which administers the area into which the household moves shall contact the State agency which overissued benefits to ascertain that it does not intend to pursue prompt collection. The State share of any collected claims, as provided in §273.18(h), shall be retained by the State agency which collects the overissuance.

[Amdt. 242, 48 FR 6861, Feb. 15, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §273.18, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§273.19 [Reserved]

§273.20 SSI cash-out.

(a) *Ineligibility.* No individual who receives supplemental security income

(SSI) benefits and/or State supplementary payments as a resident of California is eligible to receive food stamp benefits. The Secretary of the Department of Health and Human Services has determined that the SSI payments in California have been specifically increased to include the value of the food stamp allotment.

(b) *Receipt of SSI benefits.* In California, an individual must actually receive, not merely have applied for, SSI benefits to be determined ineligible for the food stamp program. If the State agency provides payments at least equal to the level of SSI benefits to individuals who have applied for but are awaiting an SSI eligibility determination, receipt of these substitute payments will terminate the individual's eligibility for food stamp benefits. Once SSI benefits are received, the individual will remain ineligible for food stamp benefits, even during months in which receipt of the SSI benefits is interrupted, or suspended, until the individual is terminated from the SSI program.

(c) *Income and resources.* In California, the income and resources of the SSI recipient living in a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d).

[Amdt. 132, 43 FR 47889, Oct. 17, 1978, as amended by Amdt. 132, 44 FR 33383, June 8, 1979. Redesignated at 45 FR 7217, Jan. 31, 1980, and amended by Amdt. 237, 47 FR 57669, Dec. 28, 1982; Amdt. 269, 51 FR 10793, Mar. 28, 1986; Amdt. 356, 59 FR 29713, June 9, 1994; Amdt. 364, 61 FR 54320, Oct. 17, 1996]

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) *System design.* This section provides for an MRRB system for determining household eligibility and benefits. For included households, this system replaces the prospective budgeting system provided in the preceding sections of this part. The MRRB system provides for the use of retrospective information in calculating household benefits, normally based on information submitted by the household in monthly reports. The State agency shall establish an MRRB system as follows:

(1) In establishing either a one-month or a two-month MRRB system, the State agency shall use the same system it uses in its AFDC Program unless it has been granted a waiver by FCS. Differences between a one-month and a two-month system are described in paragraph (d) of this section.

(2) The State agency shall determine eligibility, either prospectively or retrospectively, on the same basis that it uses for its AFDC program, unless it has been granted a waiver by FCS.

(3) The household shall be certified for a continuous period of up to twelve months, but for no less than six months. These limits may be waived for certain categories of households if the State agency can demonstrate that the waiver will improve the administration of the program.

(4) *Budgeting waivers.* FCS may approve waivers of the budgeting requirements of this section to conform to budgeting procedures in the AFDC program, except for households excluded from retrospective budgeting under paragraph (b) of this section.

(b) *Included and excluded households.* The establishment of either a monthly reporting or retrospective budgeting system is a State agency option. Certain households are specifically excluded from both monthly reporting and retrospective budgeting. A household that is included in a monthly reporting system must be retrospectively budgeted. Households not required to submit monthly reports may have their benefits determined on either a prospective or retrospective basis at the State agency's option, unless specifically excluded from retrospective budgeting.

(1) The following households are excluded from both monthly reporting and retrospective budgeting:

(i) Migrant or seasonal farmworker households.

(ii) Households in which all members are homeless individuals.

(iii) Households with no earned income in which all adult members are elderly or disabled.

(2) Households residing on an Indian reservation where there was no monthly reporting system in operation on March 25, 1994 are excluded from monthly reporting.

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

(1) An oral explanation of the purpose of MRRB;

(2) A copy of the monthly report and an explanation of how to complete and file it;

(3) An explanation that information required to be reported on the monthly report is the only reporting requirement for such information;

(4) An explanation of what the household shall verify when it submits a monthly report and how it will verify it;

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

(6) Written explanations of this information.

(7) *Special assistance.* The State agency shall provide special assistance in completing and filing monthly reports to households whose adult members are all either mentally or physically handicapped or are non–English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required reports.

(d) *One and two-month systems.* Each State agency shall adopt either a one-month or two-month MRRB system. A one-month system shall have either one or two beginning months in the certification period and a two-month system shall have two beginning months. Except for beginning months in sequence as described in the preceding sentence, the State agency shall not consider as a beginning month any month which immediately follows a month in which a household is certified.

(1) *One-month system.* In the one-month system, the issuance month immediately follows its corresponding budget month.

(2) *Two-month system.* In the two-month system, the issuance month is the second month following its corresponding budget month. There are two beginning months of participation in this system, the first month and the following month.

(e) *Determining eligibility for households not certified under the beginning months' procedures of § 273.21(g).* The State agency shall determine eligibility consistent with paragraph (a)(2) of this section and in accordance with either of the following options.

(1) *Prospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility prospectively for each of the issuance months.

(2) *Retrospective eligibility.* The State agency shall determine eligibility by considering all factors of eligibility retrospectively using the appropriate budget month except for residency and compliance with the requirements regarding social security numbers. Compliance with work registration provisions shall be considered as of the issuance month or month of application. The 60-day time frame for determining the applicability of the voluntary quit provision of § 273.7(n) shall be measured by the State agency from the date of application.

(f) *Calculating allotments for households following the beginning months*—(1) *Household composition.* (i) If eligibility is determined retrospectively the State agency shall determine the household's composition as of the last day of the budget month.

(ii) If eligibility is determined prospectively (during the beginning months or for households processed under paragraph (e)(1) of this section), the State agency shall determine the household's composition as of the issuance month.

(iii) In a two-month system, the following provisions shall apply with regard to a household which reports, in the month between the budget month and the corresponding issuance month, that it has gained a new member.

(A) The State agency shall use the same household composition for determining the household's eligibility that it uses for calculating the household's benefit level.

(B) If the new member is not already certified to receive food stamps in another household participating within the State, the new member's income, deductible expenses, and resources from the issuance month shall be considered in determining the household's

eligibility and benefit level. If the new member had been providing income to the household on an ongoing basis prior to becoming a member of the household, the State agency shall exclude the previously provided income in determining the household's issuance month benefits and eligibility.

(C) If the individual has moved out of one household receiving food stamps within the State and into another, with no break in participation, the State agency shall use the individual's income, deductible expenses, and resources from the budget month in determining benefits to be provided in the issuance month. The State agency shall include such an individual and the individual's income, deductible expenses, and resources in determining the issuance month eligibility and benefit level of either the household from which the individual has moved or the household into which the individual has moved, but not both. In determining the issuance month eligibility and benefit level of the household into which the individual has moved, the State agency shall disregard budget month income received by the new member from a terminated source.

(D) The State agency may add new members to the household effective either the month the household reports the gain of a new household member or the first day of the issuance month following the month the household reports the gain of a new member. The benefits shall not be prorated.

(iv) The State agency shall add a previously excluded member who was disqualified for an intentional program violation or failure to comply with workfare or work requirements, was ineligible because of failure to comply with the social security number requirement, or was previously an ineligible alien retrospectively to the household the month after the disqualification period ends. All other previously excluded members shall be added in accordance with the procedures in paragraph (f)(1)(iii)(B) of this section, using the new member's issuance month income and expenses.

(2) *Income and deductions.* For the household members as determined in accordance with paragraph (f)(1) of this section, the State agency shall calculate the allotment using the household members' income and deductions from the budget month, except as follows:

(i) The State agency shall annualize self-employment income which is received other than monthly, in accordance with § 273.11(a). Such income shall be budgeted either prospectively or retrospectively and shall not affect more benefit months than the number of months in the period over which it is annualized or prorated. Except that, households which receive self-employment income from a farm operation monthly but incur irregular expenses to produce such self-employment farm income shall be given the option to annualize the self-employment farm income and expenses over a 12-month period.

(ii) The State agency shall prorate contract income received over a period of less than one year and either prospectively or retrospectively budget such income. Such income shall not effect more benefit months than the number of months in the period over which it is prorated.

(iii) Earned and unearned educational income shall be prorated over the period it is intended to cover in accordance with § 273.10(c)(3)(iii), and it shall be budgeted either prospectively or retrospectively. Such income shall not effect more benefit months than the number of months in the period over which it is prorated.

(iv) The State agency shall budget deductible expenses prorated over two or more months, except medical expenses, either prospectively or retrospectively, *provided* That such deductions are not budgeted over more months than they are intended to cover, and the total amount deducted does not exceed the total amount of the expenses. Medical expenses shall be budgeted prospectively. The State agency shall continue to allow deductions for expenses incurred even if billed on other than a monthly basis unless the household reports a change in the expense. The State agency may average the child support expense and budget it prospectively or retrospectively.

(v) The State agency shall budget stable income regularly received as a

single monthly payment for the month such income is intended to cover. The State agency shall budget deductions regularly billed as a single monthly payment for the month such deductions are intended to cover.

(vi) The State agency may budget interest income using one of the following methods in paragraphs (f)(2)(vi) (A), (B), or (C) of this section. The State agency shall either establish categories of interest to be handled by each of the methods or shall offer each household the option of which method to budget the interest income.

(A) Actual interest income received in the budget month.

(B) Prorated interest income calculated by dividing the amount of interest anticipated during the certification period by the number of months in the certification period.

(C) An averaged amount adjusted for anticipated changes.

(vii) For a new household member described under paragraph (f)(1)(iii)(B) of this section, the State agency shall consider the new member's income and deductible expenses prospectively until the new member's first month living with the household becomes the budget month.

(viii) The options provided under paragraph (j)(1)(vii) of this section may affect the calculation of income and deductions.

(g) *Determining eligibility and allotments in the beginning months.* The State agency shall use the prospective budgeting procedures of this paragraph for determining the allotments and eligibility of households in the MRRB system during this first month, or first and second month of participation. The State agency shall not apply the procedures of this paragraph to the month(s) following the month of termination resulting from a temporary one-month change.

(1) *Determining eligibility during the beginning months.* The State agency shall determine eligibility prospectively in the beginning month(s).

(2) *Calculating allotments during the beginning months.* the State agency shall calculate allotments prospectively in the beginning month(s).

(3) *The first months of retrospective budgeting following the beginning months.* The State agency shall begin to base issuances to the household on retrospective budgeting during the first month for which the State's system can use the month of application as a budget month. In a one-month system, the first month for which the issuance is based on retrospective budgeting shall be the second month of participation. In a two-month system, the first month for which the issuance is based on retrospective budgeting shall be the third month of participation. If the State agency had been averaging income or converting weekly or biweekly income to a monthly amount in the beginning months, it may begin using the household's actual budget month income when the household becomes subject to retrospective budgeting. For purposes of this paragraph, any income received in either or both of the beginning months from a source which no longer provides income to the household (terminated income), which was included in the household's prospective budget, shall be disregarded when the beginning month becomes the budget month.

(h) *The monthly report form*—(1) *General.* (i) The State agency shall give the household a reasonable period of time after close of the budget month to submit the monthly reports.

(ii) The State agency shall require each household in the MRRB system to report on household circumstances on a monthly basis as a condition of continuing eligibility.

(iii) The State agency shall provide an individual or agency unit which a household may contact to receive prompt answers about the completion of the form. A telephone number (toll free for households outside the local calling area) which a household may use to obtain further information shall also be available.

(iv) The State agency shall ensure that households are informed about the availability and amount of the standard utility allowances, if the State agency offers them.

(2) *Monthly report form.* The State agency's monthly report form shall meet the following requirements:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(b) of this chapter;

(iii) Specify the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the State agency shall delay payment if the form is not received by the specified date;

(iv) Specify the verification which the household must submit with the form, in accordance with § 273.21(i);

(v) Identify the individual or agency unit available to assist in completing the form:

(vi) Include a statement to be signed by a member of the household, indicating his or her understanding that the provided information may result in changes in the level of benefits, including reduction and termination;

(vii) Include, in prominent and boldface lettering, an understandable description of the Act's civil and criminal penalties for fraud.

(viii) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (SSN's) (including the statutory citation, the title of the statute, and the fact that providing SSN's is mandatory), the purpose of requiring SSN's, the routine uses for SSN's, and the effect of not providing SSN's. This statement may be on the form itself or included as an attachment to the form.

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form except that the State agency shall not require households to monthly report medical expenses. Medical expenses may be reported in accordance with § 273.10(d)(4).

(4) *Combined form.* If the State agency uses a combined monthly report for food stamps and AFDC, the State agency shall clearly indicate on the form that non-AFDC food stamp households need not provide AFDC-only information.

(i) *Verification.* Each month the household shall verify information for those items designated by the State agency. The State agency may designate that verification be submitted for any item that has changed or appears questionable. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8)(ii) before acting on it if the change would increase the household's allotment. In the case of a reported change that would decrease the household's allotment, or make the household ineligible, the State agency shall act on the change without requiring verification, though verification which is required by § 273.2(f)(8)(i) shall be obtained prior to the household's recertification.

(j) *State agency action on reports*—(1) *Processing.* Upon receiving a monthly report, the State agency shall:

(i) Review the report to ensure accuracy and completeness.

(ii) Consider the report incomplete only if:

(A) It is not signed by the head of the household, an authorized representative or a responsible member of the household;

(B) It is not accompanied by verification required by the State agency on the monthly report;

(C) It omits information required by the State agency on the monthly report necessary either to determine the household's eligibility or to compute the household's level of food stamp benefits.

(iii) Determine those items which will require additional verification, in accordance with paragraph (i) of this section.

(iv) Contact the household directly, and take action as needed, to obtain further information on specific items. These items include:

(A) The effect of a reported change in resources on a household's total resources; and

(B) The effect of a reported change in household composition or loss of a job or source of earned income on the applicability of the work registration requirement.

(v) Notify the household, in accordance with paragraph (j)(3)(ii) of this section, of the need to submit a report, correct an incomplete or inaccurate report, or submit the necessary verification within the extension period.

(vi) Determine the household's eligibility by considering all factors, including income, in accordance with paragraphs (e) or (g) of this section.

(vii) Determine the household's level of benefits in accordance with § 273.10(e) based on the household composition determined in accordance with paragraph (f)(1) of this section. For those household members the following (except as provided in paragraph (f)(2) of this section) income and deductions shall be considered:

(A) Earned and unearned income received in the corresponding budget month, including income that has been averaged in accordance with paragraph (f) of this section. The earned income of an elementary or secondary school student excluded in accordance with § 273.9(c)(7) shall be excluded until the budget month following the budget month in which the student turns 22. The State agency has the option of converting to a regular monthly amount the income that a household receives weekly or biweekly. If the State agency elects to convert weekly or biweekly income for MRRB households, it shall do so for all households in its MRRB caseload. The State agency may convert or average income in the beginning months and use actual earned or unearned income received in the budget month following the beginning months of participation.

(B) The PA grant paid in the corresponding budget month or the PA grant to be paid in the issuance month. If the State agency elects to use the PA grant to be paid in the issuance month, the State agency shall ensure that:

(*1*) Any additional or corrective payments are counted, either prospectively or retrospectively; and

(*2*) the State agency shall disregard income received in the budget month from a terminated source which results in an increase in the PA grant, provided the household has reported the termination of the income either in the monthly report for the budget month or in some other manner which, as determined by the State agency, allows the State agency sufficient time to process the change and affect the allotment in the issuance month.

A State agency which elects to use the PA grant to be paid in the issuance month shall implement mass changes in accordance with the procedures at § 273.12(e)(2).

(C) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average.

(viii) Issue benefits in accordance with part 274 of this chapter and on the time schedule set forth in paragraph (k) of this section.

(ix) Provide specific information on how the State agency calculated the benefit level if it has changed since the preceding month, either with the issuance or in a separate notification.

(2) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2.

(ii) The State agency shall notify a household of any change from its prior benefit level and the basis for its determination. If the State agency reduces, suspends or terminates benefits, it shall send the notice so the household receives it no later than either the date the resulting benefits are to be received or in place of the benefits.

(iii) The State agency shall notify a household, in accordance with paragraph (j)(3)(iii), if its monthly report is late or incomplete, or further information is needed.

(3) *Incomplete filing.* (i) If a household fails to file a monthly report, or files an incomplete report, by the specified filing date, the State agency shall give the household at least ten more days, from the date the State agency mails the notice to file a complete monthly report.

(ii) The State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing and the lack of that verification will adversely affect the household's allotment;

(D) That the Social Security number of a new member must be reported, if

the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report.

(iii) When a State agency requires verification for the item listed and the household does not provide the verification, the State agency shall take the following actions:

(A) If the household does not verify earned income, the State agency shall regard the household's report as incomplete, take action in accordance with paragraphs (j)(3)(i) and (j)(3)(ii) of this section and, if appropriate, terminate the household in accordance with paragraph (m) of this section.

(B) If the household is using its actual utility costs to establish its shelter cost deduction in accordance with § 273.9(d) and it does not verify a change in its actual utility expenses, the State agency shall not allow a deduction for such costs.

(C) If a household fails to verify a change in reported medical expenses in accordance with § 273.2(f)(8), and that change would increase the household's allotment, the State agency shall not make the change. The State agency shall act on reported changes without requiring verification if the changes would decrease the household's allotment, or make the household ineligible.

(D) If the household does not verify other items for which verification is required, the State agency shall:

(*1*) Act on the reported change if it would decrease benefits.

(*2*) Not act on the reported change if it would increase benefits.

(E) If the household does not report or verify changes in child support, the State agency shall not allow a child support deduction.

(k) *Issuance of benefits*—(1) *Timely issuance.* (i) For an eligible household which has filed a complete monthly report by the scheduled filing date, the State agency shall provide an opportunity to participate within the month following the budget month in a one-month system, or within the second month following the budget month in a two-month system.

(ii) The State agency shall provide each household with an issuance cycle so that the household receives its benefits at about the same time each month and has an opportunity to participate before the end of each issuance month.

(2) *Delayed issuance.* (i) If an eligible household files a complete monthly report during its extension period, the State agency shall provide it with an opportunity to participate no later than ten days after its normal issuance date.

(ii) If an eligible household which has been terminated for failure to file a complete report files a complete report after its extended filing date, but before the end of the issuance month, the State agency may choose to reinstate the household by providing it with an opportunity to participate. If the household has requested a fair hearing on the basis that a complete monthly report was filed, the State agency shall reinstate the household if a completed monthly report is filed before the end of the issuance month.

(iii) If an eligible household files a complete report after the issuance month, the State agency shall not provide the household with an opportunity to participate for that month.

(l) *Other reporting requirements.* (1) *Information reported on the monthly report.* The monthly report shall be the sole reporting requirement for information required to be included in the monthly report. Changes in household circumstances not subject to monthly reporting shall be reported in accordance with § 273.12.

(2) *Households excluded from monthly reporting.* Households which are excluded from monthly reporting shall report changes in accordance with § 273.12.

(m) *Termination.* (1) The State agency shall terminate a household's food stamp participation if the household:

(i) Is ineligible for food stamps, unless suspended in accordance with paragraph (n) of this section:

(ii) Fails to file a complete report by the extended filing date; or

(iii) Fails to comply with a nonfinancial eligibility requirement, such as registering for employment.

(2) The State agency shall issue a notice to the household which:

(i) Complies with the requirements of § 271.2 for adequate notice;

(ii) Informs the household of the reason for its termination;

(iii) If the State agency allows reinstatement under paragraph (k)(2)(ii), explains how the household may be reinstated;

(iv) Informs the household of its rights to request a fair hearing and to receive continued benefits. If termination is for failure to submit a monthly report and the household states that a monthly report has been filed, the notice must advise the household that a completed monthly report must be filed prior to the end of the issuance month as a condition for continued receipt of benefits.

(3) The State agency shall issue the notice to the household so that it receives the notice no later than the household's normal or extended issuance date.

(n) *Suspension*. The State agency may suspend a household's issuance in accordance with this paragraph. If the State agency does not choose this option, it shall instead terminate households in accordance with paragraph (m) of this section.

(1) The State agency may suspend a household's issuance for one month if the household becomes temporarily ineligible due to a periodic increase in recurring income or other change not expected to continue in the subsequent month. The State agency may on a Statewide basis either suspend the household's certification prospectively for the issuance month or retrospectively for the issuance month corresponding to the budget month in which the noncontinuing circumstance occurs.

(2) The State agency shall continue to supply monthly reports to the household for one month.

(3) If the suspended household again becomes eligible, the State agency shall issue benefits on the household's normal issuance date.

(4) If the suspended household does not become eligible after one month, the State agency shall terminate the household.

(o) If a household has been terminated or suspended based on an anticipated change in circumstances, the State agency shall not count any noncontinuing circumstances which caused the prospective ineligibility when calculating the household's benefits retrospectively in a subsequent month.

(p) *Fair hearings*—(1) *Entitlement*. All households participating in a MRRB system shall be entitled to fair hearings in accordance with § 273.15.

(2) *Continuation of benefits*. (i) Any household which requests a fair hearing and does not waive continuation of benefits, and is otherwise eligible for continuation of benefits, shall have its benefits continued until the end of the certification period or the resolution of the fair hearing, whichever is first. If the State agency did not receive a monthly report from the household by the extended filing date and the household states that a monthly report was submitted, the household is entitled to continued benefits, *provided* That a completed report is submitted no later than the last day of the issuance month.

(ii) The State agency shall provide continued benefits no later than five working days from the day it receives the household's request.

(iii) A household whose benefits have been continued shall file montly reports until the end of the certification period. If the fair hearing is with regard to termination for nonreceipt of the monthly report by the State agency, a completed monthly report for the month in question shall be submitted by the household no later than the last day of the issuance month.

(iv) During the fair hearing period the State agency shall adjust allotments to take into account reported changes, except for the factor(s) on which the fair hearing is based.

(q) *Recertification*—(1) *Timeliness*. The State agency shall recertify an eligible household which timely reapplies and provides it with an opportunity to participate in the household's normal issuance cycle.

(2) *Retrospective Recertification*. (i) The State agency shall recertify the household using retrospective information to determine the household's benefit level for the first month of the new certification period.

(ii) If the State agency is operating a two-month MRRB system, the State

agency may delay reflecting information from the recertification interview in the household's eligibility and benefit level until the second month of the new certification period.

(iii) The State agency shall recertify households according to one of the three options set forth in paragraphs (q) (3), (4), or (5) of this section.

(3) *Option One: Recertification form.* (i) The State agency shall provide each household with a recertification form to obtain all necessary information about the household's circumstances for the budget month.

(ii) The State agency shall mail the form to the household, along with a notice of expiration, in place of the monthly report form. The State agency shall either: Mail the recertification form along with the notice of expiration; use a recertification form which contains a notice of expiration; or mail the recertification form and the notice of expiration separately, as long as the forms are mailed at the same time.

(iii) The household shall submit the form to the State agency in accordance with paragraph (h)(1)(i) of this section.

(4) *Option Two: Monthly report and addendum.* (i) The State agency shall provide each household with a notice of expiration and monthly report form and an addendum to obtain all additional information necessary for recertification.

(ii) The State agency shall either: Mail the monthly report form along with the notice of expiration; use a monthly report form which contains a notice of expiration; or mail the monthly report form and the notice of expiration separately, as long as the forms are mailed at the same time.

(iii) The household shall submit the monthly report to the State agency in accordance with paragraph (h)(1)(i) of this section.

(iv) The State agency shall deliver the recertification addendum to the household along with the monthly report form or obtain the necessary information from the household at the interview.

(v) The household shall submit the addendum to the State agency no later than the time of the interview.

(5) *Option Three: Signed Statement.* (i) The State agency shall recertify households based on the monthly report and the interview.

(ii) At the interview, the State agency shall obtain all of the information not provided in the monthly report which is necessary for recertification.

(iii) The State agency shall ensure that it has on file a statement signed by the appropriate household member that the household has applied for recertification.

(6) *Interview.* (1) The State agency shall conduct a complete interview with a household member or an authorized representative.

(ii) The State agency shall schedule the interview at any time during the last month of the old certification period.

(iii) If the State agency schedules the interview for a date on or before the normal filing due date of the monthly report, the State agency shall permit the household member and authorized representative to bring the recertification form or monthly report to the interview.

(r) *Procedures for households that change their reporting and budgeting status.* The State agency shall use one of the following procedures for households subject to change in reporting/budgeting status.

(1) *Households which become subject to MRRB.* The State agency may change the reporting/budgeting status of households which become subject to monthly reporting at any time following the change in household circumstances which results in the change in the household's reporting/budgeting status, subject to the following conditions:

(i) The State agency shall provide the household with information provided to MRRB households under paragraph (c) of this section. If the State agency elects to implement the change during the certification period, it may omit the oral explanation of MRRB required under paragraph (c)(1).

(ii) The State agency shall not require the household to submit a monthly report during any month in which the household was subject to the change reporting requirements of § 273.12.

(2) *Households which are no longer subject to MRRB.* The agency shall use one

of the following procedures to remove households from the MRRB system.

(i) *Procedures for households exempt from MRRB.* For any household which becomes exempt from MRRB under paragraph (b) of this section, the State agency shall notify the household within 10 days of the date the State agency becomes aware of the change that the household has become exempt from monthly reporting and is no longer required to file any future monthly reports and has also become exempt from retrospective budgeting and when the change in budgeting will go into effect. The State agency shall begin determining the household's benefits prospectively no later than the first issuance month for which a household has not submitted a monthly report for the budget month.

(ii) *Other households moving from MRRB to change reporting and prospective budgeting.* When a household is no longer subject to MRRB under a State agency's system, the State agency may begin determining the household's benefits prospectively in any month following the month the State agency becomes aware of the changed circumstances which necessitate the need to change the household's reporting/budgeting status. If the State agency elects to change the household's reporting/budgeting status prior recertification it shall provide the household with a notice explaining the change in the month prior to the month the change is effective. If the State agency elects to change the household's status at recertification it shall advise the household at the recertification interview that its reporting/budgeting status is being changed.

(iii) *Households moving from MRRB to retrospective budgeting and change reporting.* If a household's status necessitates changing it from a monthly reporter to a change reporter while continuing to be budgeted retrospectively, the State agency may change the household's status at any time. If the State agency elects to change the household immediately, the State agency shall provide the household with a notice that it is no longer subject to monthly reporting. The notice shall include information about the household's reporting requirements under § 273.12.

(s) *Implementation of Regulatory Changes.* The State agency shall implement changes in regulatory provisions for households subject to MRRB prospectively based on the effective date and implementation time frame published in the FEDERAL REGISTER. Rules are effective as of the same date for all households regardless of the budgeting system.

(t) *Monthly reporting requirements for households residing on reservations.* The following procedures shall be used for households which reside on reservations and are required to submit monthly reports:

(1) *Definition of a reservation.* For purposes of this section, the term ''reservation'' shall mean the geographically defined area or areas over which a tribal organization exercises governmental jurisdiction. The term ''tribal organization'' shall mean the recognized governing body of an Indian tribe (including the tribally recognized intertribal organization of such tribes), as well as any Indian tribe, band, or community holding a treaty with a State government.

(2) *Certification periods.* Any household residing on a reservation that is required to submit a monthly report shall be certified for two (2) years.

(i) A State agency may request a waiver from FCS to allow it to establish certification periods of less than two (2) years if it is able to justify the need for the shorter periods. Any request for a waiver shall include input from the affected Indian tribal organization(s) and quality control error rate information for the affected households.

(ii) The State agency may opt to continue the two-year certification period for any household that moves off the reservation. If the State agency adopts this option and the household is still living off the reservation at the time it is subject to required recertification, the household shall be subject to the certification period requirements in § 273.10(f)(4). If the State agency does not adopt this option, any household that moves off the reservation shall have its certification period shortened. A household continuing to be subject

to monthly reporting shall not have its certification period shortened to less than six months. A household becoming subject to change reporting shall not have its certification period end any earlier than the month following the month in which the State agency determines that the certification period shall be shortened.

(3) *Benefit determination for missing reports.* The State agency shall not delay, reduce, or suspend the allotment of a household that fails to submit a report by the issuance date.

(4) *Reinstatement.* If a household is terminated for failing to submit a monthly report, the household shall be reinstated without being required to submit a new application if a monthly report is submitted no later than the last day of the month following the month the household was terminated.

(5) *Notices.* (i) All notices regarding changes in a household's benefits shall meet the definition of adequate notice as defined in § 271.2 of this chapter.

(ii) If a household fails to file a monthly report by the specified filing date, the State agency shall notify the household within five days of the filing date:

(A) That the monthly report is either overdue or incomplete;

(B) What the household must do to complete the form;

(C) If any verification is missing;

(D) That the Social Security number of a new member must be reported, if the household has reported a new member but not the new member's Social Security number;

(E) What the extended filing date is;

(F) That the State agency will assist the household in completing the report; and

(G) That the household's benefits will be issued based on the previous month's submitted report without regard to any changes in the household's circumstances if the missing report is not submitted.

(iii) Simultaneously with the issuance, the State agency shall notify a household, if its report has not been received, that the benefits being provided are based on the previous month's submitted report and that this benefit does not reflect any changes in the household's circumstances. This notice shall also advise the household that, if a complete report is not filed timely, the household will be terminated.

(iv) If the household is terminated, the State agency shall send the notice so the household receives it no later than the date benefits would have been received. This notice shall advise the household of its right to reinstatement if a complete monthly report is submitted by the end of the month following termination.

(6) *Supplements and claims.* If the household submits the missing monthly report after the issuance date but in the issuance month, the State agency shall provide the household with a supplement, if warranted. If the household submits the missing monthly report after the issuance date or the State agency becomes aware of a change that would have decreased benefits in some other manner, the State agency shall file a claim for any benefits overissued.

[48 FR 54965, Dec. 8, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 273.21, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 273.22 Optional workfare program.

(a) *General.* This section contains rules which are to be followed in operating a Food Stamp Workfare Program. Under this program, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(b) *Program administration.* (1) A food stamp workfare program may be operated as part of a State's employment and training program, required in § 273.7(f) or may be operated independent of such a program. If the workfare program is part of the State's employment and training program it shall be included as a component in the State's employment and training plan in accordance with the requirements of § 273.7(c). If it is operated independent of the E&T program, the State must submit a workfare plan to FCS for its

approval in accordance with the requirements of this section. For the purpose of this section, a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State workfare or employment and training plan.

(2) Political subdivisions are encouraged, but not required, to submit their plans to FCS through their respective State agencies. At a minimum, however, plans shall be submitted to the State agencies concurrent with their submission to FCS. Workfare plans and subsequent amendments shall not be implemented prior to their approval by FCS.

(3) When a State agency chooses to sponsor a workfare program by submitting a plan to FCS, it shall incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FCS, the State agency shall be responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (d) of this section. Upon notification that FCS has approved a workfare plan submitted by a political subdivision in its State, the State agency shall append that political subdivision's workfare plan to its own State Plan of Operations.

(4) The operating agency is that administrative organization which has been identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this section. The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision which submitted the workfare plan shall be responsible for monitoring the operating agency's compliance with the requirements of this section or of the workfare plan. The Secretary may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision which submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies have failed to comply with the requirements of this section or of the workfare plan.

(5) State agencies or other political subdivisions shall describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, shall fulfill the provisions of this section. The plan shall include workload projections, staffing plans, interagency communication plans, and specific operational agreements developed by the agencies involved. The plan shall be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(6) State agencies or political subdivisions submitting a workfare plan shall submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operation shall be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget shall be included in the State agency's budget.

(7) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department shall determine which political subdivision will have its plan approved. Under no circumstances shall a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(c) *Operating agency responsibilities.* (1) The operating agency, as designated by the State agency or other political subdivision which submits a plan, shall be

responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this section.

(2) *Establishment of job sites.* Workfare job slots may only be located in public or private, nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs which include but are not limited to designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(3) *Notifying State agency of noncompliance.* The operating agency shall notify the State agency of noncompliance by a household with a workfare obligation when it has determined that the household did not have good cause for the non-compliance. This notification shall occur within five days of such determination so that the State agency may make a final determination as provided in paragraph (d)(4) of this section.

(4) *Notifications.* Notices shall be established to be used as follows: (i) For the State agency to notify the operating agency of workfare-eligible households. Included in this notice shall be the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, this shall also be included in this notice. If the operating agency is computing the hours to be worked, the monthly allotment shall be included.

(ii) For operating agencies to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(iii) For operating agencies to notify the State agency of failure by a household to meet its workfare obligation.

(5) *Recordkeeping requirements.* (i) Files must be maintained which record activity by workfare participants. At a minimum, these records must contain job sites and hours assigned, hours completed, and communications with the State agency and job sites.

(ii) Program records shall be maintained in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. Fiscal records and accountable documents shall be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph, means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph, means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records shall be kept in a manner which will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (f)(4) of this section.

(6) *Reporting requirements.* The operating agency shall be responsible for providing information needed by the State agency to fulfill the reporting requirements stated in paragraph (d)(6) of this section.

(7) *Disclosure.* The provisions of § 272.1(c) restricting the use and disclosure of information obtained from food stamp households shall be applicable to the administration of the workfare program.

(8) *Grievance procedures.* The operating agency may establish a system for handling complaints filed by workfare participants regarding their working conditions, perceived noncompliance by job sites with the provisions of this section, or any other area related to their workfare participation. This procedure need not handle complaints that can be pursued through a fair hearing nor may choosing not to use this procedure preclude a participant from requesting a fair hearing. If established, a description of this system shall be included in the workfare plan. Complaints which have not been resolved through this system and those against

the operating agency shall be forwarded to the State agency and handled by the State agency according to the provisions of § 271.6. Workfare participants shall be informed of the grievance procedure.

(d) *State agency responsibilities.* (1) If a political subdivision chooses to operate a workfare program, the State agency shall cooperate with the political subdivision in developing a plan. This includes providing caseload and cost estimates, as well as being available for consultation on the design of the administrative structure and interagency communications for the program. The State agency may decide what its workfare policy shall be in three areas. They are the definition of reimbursable expenses, the definition of good cause, and the sanctioning of members of divided households (paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section, respectively). The State agency may either accept the policies contained in these paragraphs or determine its own policies, subject to the requirements of section 20 of the Food Stamp Act of 1977, as amended, and the approval of FCS. Until the Food and Consumer Service approves any alternate policies of the State agency, the provisions of paragraphs (f)(4), (f)(5), and (f)(6)(ii) of this section shall apply.

(2) The State agency shall determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (e)(1) of this section shall be referred to the organization which is the operating agency. The information identified in paragraph (c)(4)(i) of this section shall be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(3) The State agency shall inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This includes changes in benefit levels or workfare eligibility.

(4) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency shall make a final determination as to whether or not such failure occurred and whether there was good cause for any such failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction shall be processed as provided in paragraph (f)(6) of this section. The State agency shall immediately inform the operating agency of the months during which the sanction shall apply.

(5) The State agency shall maintain in each household's casefile all workfare-related forms used by the State agency in meeting the requirements of this section.

(6) The State agency shall submit quarterly reports to FCS within 45 days of the end of each quarter identifying for that quarter for that State:

(i) The number of households referred to the operating agency as containing workfare-eligible recipients. A household shall be counted as referred each time it is referred to the operating agency.

(ii) The number of households assigned to jobs each month by the operating agency.

(iii) The number of individuals assigned to jobs each month by the operating agency.

(iv) The total number of hours worked by participants.

(v) The number of households against which sanctions were applied. A household being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(7) The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FCS. Should the State agency assume this responsibility, it would act as agent for FCS which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or

FCS directs otherwise. FCS shall be notified prior to the withholding of funds of the circumstances leading to that action. At a minimum, the State agency shall perform onsite reviews of each workfare program once within six months of the program's implementation and then in accordance with the Management Evaluation review schedule for that program area.

(e) *Household responsibilities*—(1) *Persons subject to workfare.* Household members subject to the work registration requirements as provided in §273.7(a) shall also be subject to the workfare requirements. In addition:

(i) Those recipients exempt from work registration requirements due to being subject to the work incentive program (WIN) under title IV of the Social Security Act shall be subject to workfare if they are currently involved less than 20 hours a week in WIN. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(ii) Those recipients exempt from work registration requirements due to the application for or receipt of unemployment compensation shall be subject to workfare requirements; and

(iii) Those recipients exempt from work registration requirements due to being a parent or other household member responsible for the care of a dependent child between the ages of six and twelve shall be subject to workfare requirements. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall be subject to the workfare requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(2) *Household obligation.* The maximum total number of hours of work required of a household each month shall be determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month except when the household wishes to end a disqualification due to noncompliance with workfare in accordance with paragraph (f)(8) of this section.

(f) *Other program requirements*—(1) *Priority placements.* The State agency or political subdivision submitting the plan shall indicate in the plan how it will determine priority for placement at job sites when the number of eligible participants is greater than the number of available positions at job sites.

(2) *Conditions of employment.* (i) Recipients may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a recipient under workfare together with any other hours worked in any other compensated capacity, including hours of participation in a WIN training program, by such recipient on a regular or predictable part-time basis, shall not exceed thirty hours a week. With the recipient's consent, the hours to be worked may be scheduled in such a manner that more than thirty hours are worked in one week, as long as the total for that month does not exceed the weekly average of thirty hours a week.

(ii) No participant shall be required to work more than eight hours on any given day, except that with the recipient's consent, more than eight hours may be scheduled.

(iii) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in §273.7(i)(1)(iii) and (iv); and §273.7(i)(2) (i), (ii), (iv), and (v).

(iv) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements, the additional work requirements established in §273.7(e) (1), (2), (3), or (4), or the job search requirements established in §273.7(f), such inability shall not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency shall, if possible, reschedule the missed activity. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification.

(v) The operating agency shall assure that all persons employed in workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These shall be benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant.

(vi) All persons employed in workfare jobs shall be assured by the operating agency of working conditions provided other employees similarly employed.

(vii) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89–286), relating to health and safety conditions, shall apply to the workfare program.

(viii) Operating agencies shall not provide work to a workfare participant which has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies, due to hiring freezes, terminations, or layoffs, shall not be filled by a workfare participant unless it can be demonstrated that such vacancies are a result of insufficient funds to sustain former staff levels.

(ix) The workfare jobs shall in no way infringe upon the promotional opportunities which would otherwise be available to regular employees.

(x) Workfare jobs shall not be related in any way to political or partisan activities.

(xi) Workfare assignments should, to the greatest extent possible, take into consideration previous training, experience, and skills of a participant.

(xii) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (g) of this section. Whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site), and therefore, USDA does not assume liability for any injury to or death of a workfare participant while on the job.

(xiii) The nondiscrimination requirement provided in § 272.6(a) shall apply to all agencies involved in the workfare program.

(3) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under § 273.7 during this time.

(4) *Participant reimbursement.* Participants shall be reimbursed by the operating agency for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs shall not include the cost of meals away from home. No participant cost which has been reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program shall be reimbursed under the food stamp workfare program. Only reimbursement of participant costs which are up to but not in excess of $25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (g)(1) of this section. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. Pursuant to paragraph (d)(1) of this section, a State agency may decide what its reimbursement policy shall be.

(5) *Good cause.* For the purpose of this section, unless a State agency has determined its good cause policy pursuant to paragraph (d)(1) of this section, good cause shall include:

(i) Circumstances beyond a household member's control, such as, but not limited to: Illness; the illness or incapacitation of another household member requiring the presence of the workfare participant; a household emergency; or

the lack of transportation when transportation is not provided by the operating agency;

(ii) Necessity for a parent or other responsible household member to care for a child between the age of six and 12 because adequate child care is not otherwise available;

(iii) Becoming exempt from the workfare eligibility requirements under the terms established in paragraph (e)(1) of this section.

(iv) Household moving out of the area of the workfare project.

(v) Instances where cost of transportation and other costs have exceeded $25 per month and are not being reimbursed by the operating agency.

(6) *Failure to comply.* (i) Where a workfare participant has been determined by the State agency to have failed or refused without good cause to comply with the requirements of this section, the entire household shall be ineligible to participate. Such ineligibility shall continue until either the household meets the provisions of paragraph (f)(8) of this section or for 2 consecutive months, whichever occurs earlier. Within 10 days after receiving notification of the household's failure to comply with the requirements of this section, the State agency shall, if it determines that there is not good cause for the noncompliance, provide the household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the proposed period of disqualification and shall specify the terms and conditions on which disqualification can be ended. Information shall also be included with the notification on the procedures and requirements contained in paragraph (f)(8) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, or following a fair hearing decision if a fair hearing is requested, in which the household would normally have received benefits. A household member shall not be required to perform work at a job site when the household is no longer receiving benefits unless the household has chosen to meet the conditions for ending disqualification specified in paragraph (f)(8) of this section. Until the disqualification is actually invoked, the household, if otherwise eligible, will continue to have a workfare obligation.

(ii) Should a household have two or more consecutive months of noncompliance while being certified for food stamps, the total corresponding months of sanction shall be a cumulative total; that is, two months of noncompliance shall entail a four-month sanction. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow all the members of the household at the time of the noncompliance. None of those household members shall be eligible to participate in the food stamp program for the length of the sanction beginning at the point when the sanction can be placed against any one of them.

(iii) If a sanctioned household member joins another food stamp household, that household's eligibility and benefit level shall be determined as follows:

(A) *Income, resources, and deductible expenses.* The income and resources of the household member(s) disqualified for noncompliance with workfare shall count in their entirety, and the entire household's allowable earned income standard, medical, dependent care and excess shelter deductions shall apply to the remaining household members.

(B) *Eligibility and benefit level.* An individual disqualified for noncompliance with workfare shall not be included when determining the household's size for the purpose of assigning a benefit level to the household or of comparing the household's monthly income with income eligibility standards. The State agency shall ensure that no household's coupon allotment is increased as a result of the disqualification of one or more household member for workfare noncompliance.

(7) *Fair hearings.* Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a State agency determination of failure to comply with the requirements of this section. The fair hearing requirements provided in § 273.15 shall apply. If a fair hearing is scheduled, the operating agency shall be available to participate in the hearing. The State

agency shall provide the operating agency sufficient advance notice to permit the attendance of an operating agency representative.

(8) *Ending disqualification.* Following the end of the 2-month disqualification period for noncompliance with the workfare provisions of this section, a household may resume participation in the program if it applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if it makes application and is determined otherwise eligible) be permitted to resume participation if the member who failed to comply or any other workfare-eligible member of the household satisfies all outstanding workfare obligations. A workfare position shall be made available for a household which wishes to end disqualification in this manner.

(9) Benefit overissuances. If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency shall follow claim recovery procedures specified below.

(i) If the person who performed the work is still subject to a work obligation, the State shall determine how may extra hours were worked because of the improper benefit. The participant should be credited that number of hours toward future work obligations.

(ii) If a workfare or work component requirement does not continue, the State agency shall determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency shall determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper benefit level been used in calculating the number of hours to work. A claim shall be established for the amount of the overissuance not ''worked off,'' if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim shall be established. No credit for future work requirements shall be given.

(g) *Federal financial participation*—(1) *Administrative costs.* Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program shall be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to $25 per month for any participant, as indicated in paragraph (f)(4) of this section. Such costs shall not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of $25 per month for any participant.

(2) *Funding mechanism.* The State agencies shall have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency shall also assure that records are being maintained which support the financial claims being made to FCS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(3) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs shall be identified by the State agency on the Financial Status Report (Form SF–269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds shall be maintained in accordance with § 277.12.

(4) *Sharing workfare savings*—(i) *Entitlement.* A political subdivision is entitled to share in the benefit reductions which occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.

(A) To begin employment means to appear at the place of employment and to begin working.

(B) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation which shall not end first participation shall be due to the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(ii) *Calculating the benefit reductions.* The political subdivision shall calculate benefit reductions from each workfare participant's employment as follows.

(A) Unless the political subdivision knows otherwise, it shall presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment which reflects a full months wages, earned income deduction, and dependent care deduction attributable to the new job.

(B) If the political subdivision knows of other changes besides the new job, which affect the household's allotment after the new job began, the political subdivision shall obtain the first allotment affected by an entire month's wages from the new job. The political subdivision shall then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision shall also replace any AFDC grant received after the new job with the one received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment shall be the benefit reduction.

(C) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(D) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment shall be corrected before the savings are calculated.

(iii) *Accounting.* The reimbursement from workfare shall be reported and paid as follows:

(A) The political subdivision shall report its enhanced reimbursement to the State agency in accordance with paragraph (g)(3) of this section.

(B) The Food and Consumer Service shall reimburse the political subdivision in accordance with paragraph (g)(2) of this section.

(C) The political subdivision shall, upon request, make available for review sufficient documentation to justify the amount of the enhanced reimbursement.

(D) The Food and Consumer Service shall reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (g)(1) of this section.

(h) *Coordination with other workfare-type programs.* State agencies and political subdivisions may operate workfare programs as provided in this section jointly with a workfare program operated under Title IV of the Social Security Act to the extent that provisions and protections of the statute are maintained or with other workfare programs operated by the subdivision to the extent that the provisions and protections of this section are maintained. Statutory provisions include, but are not limited to, eligible recipients as provided in paragraph (e)(1) of this section, maximum hours of work per week as provided in paragraph (f)(2)(i) of this section and the penalty for noncompliance as provided in paragraph (f)(6)(i) of this section. When a household receives benefits from more than one program with a workfare requirement and the household is determined to have a food stamp workfare obligation, the food stamp obligation may be combined with the obligation from the other program. However, this may be done only to the extent that eligible food stamp workfare participants are not required to work more than 30 hours a week in accordance with paragraph (f)(2)(i) of this section. Any intent to coordinate programs should be described in the plan. Waivers of provisions in this section, for the purpose of operating workfare jointly with local general assistance workfare-type programs may be requested and provided in accordance with § 272.3(c). Statutory provisions, shall not be waived.

(i) *Voluntary workfare program.* State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalty for failure to comply as provided in paragraph (f)(6) of this section shall not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (f)(2) of this section. In addition, all protections provided under paragraph (f)(2) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criteria, the Department reserves the right to withdraw approval.

[Amdt. 217, 47 FR 44697, Oct. 8, 1982, as amended by Amdt. 240, 48 FR 1173, Jan. 11, 1983; Amdt. 269, 51 FR 10793, Mar. 28, 1986, 53 FR 31646, Aug. 19, 1988; Amdt. 356, 59 FR 29713, June 9, 1994]

§273.23 Simplified application and standardized benefit projects.

(a) *General.* This subpart establishes rules under which Simplified Application and Standardized Benefit Projects shall operate. State agencies and political subdivisions chosen as project operators may designate households containing members receiving AFDC, SSI, or Medicaid benefits as project eligible. Project eligible households shall have their food stamp eligibility determined using simplified application procedures. Food stamp eligibility shall be determined using information contained in their AFDC, or Medicaid application, or, in the case of SSI, on the State Data Exchange (SDX) tape, and any appropriate addendum. Project-eligible households shall be considered categorically food stamp resource eligible based on their eligibility for these other programs and shall be required to meet food stamp income eligibility standards. However, income definitions appropriate to the AFDC, SSI or Medicaid programs shall be used instead of food stamp income definitions in determining eligibility. In addition, such households shall, as a condition of program eligibility, meet and/or fulfill all food stamp nonfinancial eligibility requirements. (Project-eligible households defined as categorically eligible in §273.2 (j) and (k) of these regulations are not required to meet the income eligibility standards.) To further simplify program administration, benefits provided to such households may be standardized by category of assistance and household size.

(b) *Program administration.* (1) Simplified application and standardized benefit procedures are applicable in five States and five political subdivisions. For the purpose of this section, a political subdivision is a project area as defined in §271.2 of these regulations.

(2) State agencies and political subdivisions seeking to operate a Simplified Application and Standardized Benefit Project shall submit Work Plans to FCS in accordance with the requirements of this section.

(3) FCS shall evaluate Work Plans according to the criteria set forth in the Simplified Application/Standardized Benefit Notice of Intent.

(4) Political subdivisions shall submit their Work Plans to FCS through their respective State agencies for review and approval.

(5) A State agency selected by FCS to operate a Simplified Application and Standardized Benefit Project shall include the Work Plan in its State Plan of Operations. A political subdivision chosen to operate a Simplified Application and Standardized Benefit Project shall assure that the responsible State agency include that political subdivision's project Work Plan in its own State Plan of Operations. The Work Plan shall be updated, as needed, to reflect changes in the benefit methodology, subject to prior FCS approval.

(c) *Contents of the work plan.* The Work Plan submitted by each applicant

shall contain the following information:

(1) Background information on the proposed site's characteristics, current operating procedures, and a general description of the proposed procedures;

(2) A description of the proposed project design, including the benefit methodology, households which will be project eligible, operational procedures, and the need for waivers;

(3) An implementation and monitoring plan describing tasks, staffing and a timetable for implementation;

(4) An estimate of project impacts including implementation costs and, on an annual basis, operating costs, administrative costs, error reduction, and benefit changes; and

(5) A statement signed by the State official with authority to commit the State or political subdivisions to the project's operation.

(d) *Project-eligible households.* Each operating agency shall decide which of the following categories of household shall be eligible to participate in the project.

(1) Households all of whose members receive AFDC benefits under part A of title IV of the Social Security Act;

(2) Households all of whose members receive SSI benefits under title XVI of the Social Security Act;

(3) Households all of whose members receive Medicaid benefits under title XIX of the Social Security Act;

(4) Households each of whose members receive one or more of the following: AFDC, SSI, or Medicaid benefits (multiple-benefit households); and

(5) Households only some of whose members receive AFDC, SSI, and/or Medicaid benefits (mixed households).

(e) *Determining Food Stamp Program eligibility*. Under the Simplified Application and Standardized Benefit Project, project eligible households shall have their food stamp eligibility determined using the following criteria.

(1) Certain households, at the operating agency's option, which contain members receiving AFDC, SSI, or Medicaid benefits, shall be designated project eligible and need not make separate application for food stamp benefits. Once such households indicate in writing a desire to receive food stamps, their eligibility will be determined based on information contained in their application for AFDC or Medicaid benefits or, in the case of SSI, on the State Data Exchange (SDX) tape. AFDC or Medicaid applications may need to be modified, or be subject to an addendum in order to accommodate any additional information required by the operating agency.

(2) The income definitions and resource requirements prescribed under §273.9 (b) and (c) and §273.8 are inapplicable to project-eligible households. Project-eligible households which have met the resource requirements of the AFDC, SSI, and/or Medicaid programs shall be considered to have satisfied the food stamp resource requirements. Gross income less any allowed exclusions, as defined by the appropriate categorical aid program, shall be used to determine food stamp income eligibility (unless the project household is categorically income eligible as defined in §273.2 (j) and (k)) and benefit levels. Deemed income, as defined under AFDC, SSI or Medicaid rules, shall be excluded to the extent that households with such income are part of the food stamp household providing the deemed income.

(3) Project-eligible households which are not categorically income eligible shall meet the gross and net income standards prescribed in §273.9(a). Net income shall be determined by subtracting from gross income either actual or standardized deduction amounts. If standardized deduction amounts are used, they may be initially determined using recent historical data on deductions claimed by such households. Such deductions must be updated, as necessary, on at least an annual basis. Such deductions shall include:

(i) The current standard deduction for all households;

(ii) An excess shelter deduction and a dependent care deduction for households not containing an elderly or disabled member;

(iii) A dependent care deduction, an uncapped excess shelter deduction and a medical deduction for households containing a qualified elderly or disabled member; and

(iv) A standardized or actual earned income deduction for households containing members with earned income.

(4) All non-financial food stamp eligibility requirements shall be applicable to project-eligible households.

(f) *Benefit levels.* (1) In establishing benefits for project eligible households, either the appropriate State standard of need (maximum aid payment) or gross income as determined for the appropriate categorical aid program plus the value of any monetary categorical benefits received, if any, may be used as the gross income amount. If mixed households are designated project eligible, procedures shall be developed to include as household income the income of those household members not receiving categorical aid.

(2) If allotments are standardized, the average allotment for each category of household, by household size, shall be no less than average allotments would have been were the project not in operation.

(3) Benefit methodologies shall be constructed to ensure that benefits received by households having higher than average allotments under normal program rules are not significantly reduced as a result of standardization.

(4) Benefit methodologies shall be structured to ensure that decreases in household benefits are not reduced by more than $10 or 20%, whichever is less.

(5) The methodology to be used in developing benefit levels shall be determined by the operating agency but shall be subject to FCS approval.

(6) With FCS approval, operating agencies may develop an alternate methodology for standardizing allotments/deductions for specific sizes and categories of households where such size and category is so small as to make the use of average deductions and/or allotments impractical.

(7) FCS may require operating agencies to revise their standardized allotments during the course of the project to reflect changes in items such as household characteristics, the Thrifty Food Plan, deduction amounts, the benefit reduction rate, or benefit levels in AFDC or SSI. Such changes will be documented by revising the Work Plan amendment to the State Plan of Operations.

(g) *Household notification.* All certified project-eligible households residing in the selected project sites shall be provided with a notice, prior to project commencement, informing them of the revised procedures and household requirements under the project. If household allotments are to be standardized, the notice shall also provide specific information on the value of the newly computed benefit and the formula used to calculate the benefit. The notice shall meet the requirements of a notice of adverse action as set forth in § 273.13(a)(2).

(h) *Application processing procedures.* (1) The operating agency shall allow project-eligible households to indicate in writing their desire to receive food stamps. Such households shall be notified in writing, at the time such indication is made, that information contained in their AFDC, SSI, or Medicaid application will be the basis of their food stamp eligibility determination. If mixed households are included in the project-eligible universe, the project operator shall develop a procedure to collect the necessary information on household members not receiving categorical aid.

(2) The operating agency may use simplified application and standardized benefit procedures only for those households containing at least one member certified to receive either AFDC, SSI, or Medicaid benefits. If simplified procedures are to be used, the State agency shall make all eligibility determinations for households jointly applying for food stamps and AFDC, SSI, or Medicaid benefits within the 30-day food stamp processing period. If a household's eligibility for AFDC, SSI, or Medicaid cannot be established within the 30-day period, normal food stamp application, certification, and benefit determination procedures shall be used and benefits shall be issued within 30 days if the household is eligible. Households which are jointly applying for AFDC, SSI, or Medicaid, and which qualify for expedited service, shall be certified for food stamps using procedures prescribed at § 273.2(i). However, if the State agency can process the application of an expedited service household for categorical assistance within the expedited period

prescribed at § 273.2(i), it may use simplified application and standardized benefit procedures to certify the household for food stamp benefits.

(i) *Regulatory requirements.* (1) All Food Stamp Program regulations shall remain in effect unless they are expressly altered by the provisions of this section or the provisions contained within the approved SA/SB Work Plan.

(2) *Certification periods for mixed households.* At the option of the operating agency, mixed households may be assigned certification periods of up to one year. Such households, if circumstances warrant, may be required to attend a face-to-face interview on a schedule which would conform to certification periods normally assigned such households as specified in § 273.10(f). At the time of the interview, the household shall be required to complete a modified application and provide additional information in accordance with § 273.2(f). If the household fails to comply with the interview review requirement or if information obtained indicates a revision in household eligibility or benefits, action will be taken in accordance with § 273.13, Notice of Adverse Action.

(j) *Quality control.* (1) Project eligible households selected for quality control review shall be reviewed by the State agency using special procedures, based on project requirements, which have been developed by the State agency and approved by FCS.

(2) The error rate(s) determined using the special quality control review procedures shall be included when determining the State agency's overall error rate.

(k) *Funding.* Operating agencies shall be reimbursed for project costs at the rates prescribed in § 277.4.

(l) *Evaluation.* Each project site shall conduct a self-evaluation of the project's impact on benefits, administrative costs and participation. Such evaluation shall be conducted within three months of project implementation. The results of the self-evaluation shall be sent to FCS within six months of project implementation. The impact of the project on project-eligible households' error rates shall be reported on an annual basis in accordance with § 273.23(m).

(m) *Reporting requirements.* Operating agencies shall be required to prepare and submit to FCS an annual report on the error rate attributable to project-eligible households. The timing of such reports shall coincide with the due date for the annual quality control report prescribed in § 275.21(d).

(n) *State agency monitoring.* Monitoring shall be undertaken to ensure compliance with these regulations and the Work Plan submitted to and approved by FCS. Project monitoring shall be conducted in accordance with the appropriate sections of part 275, Performance Reporting System, of these regulations. At a minimum, onsite reviews of the Simplified Application and Standardized Benefit Project shall be conducted once within six months of the project's implementation and then in accordance with the Management Evaluation review schedule for the project area.

(o) *Termination.* (1) FCS may terminate project operations for any reason and at any time on 60 days written notice to the administering State agency or political subdivision. State or local agencies may also choose to terminate their participation with 60 days written notice to FCS. In either such event, operating agencies shall be given sufficient time to return to normal operations in an orderly fashion.

(2) If termination occurs, FCS may select another site for project operations. Such selection shall be based on either previously received project proposals or proposals received under a new solicitation.

[53 FR 26224, July 12, 1988]

PART 274—ISSUANCE AND USE OF COUPONS

Sec.

274.1 State agency issuance responsibility.
274.2 Providing benefits to participants.
274.3 Issuance systems.
274.4 Reconciliation and reporting.
274.5 Authorized representatives.
274.6 Replacement issuances to households.
274.7 Coupon management.
274.8 Responsibilities of coupon issuers, and bulk storage and claims collection points.
274.9 Closeout of a coupon issuer.