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date of the household's initial opportunity to obtain its last allotment.

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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

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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

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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

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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 FNS as a retailer if the center wishes to redeem coupons through a wholesaler or, if it is not authorized by FNS 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 FNS 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

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the list on either a monthly or semi-monthly 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 rehabili-

tation 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 FNS 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 FNS 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 FNS 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 FNS 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 FNS 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

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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 resi-

dents 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 FNS 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 FNS 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.

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(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 pro-

viding 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.

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(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 in-

eligible 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

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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 FNS in accordance with the procedures specified in §273.18(h). For submission to FNS, 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:

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(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 FNS-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