

(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.

Dated: July 15, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

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7 CFR Parts 272, 273, 278, and 279

[Amendment No. 364]

RIN 0584-AB60

Food Stamp Program: Simplification of Program Rules

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of a proposed rulemaking published on January 11, 1995. It amends Food Stamp Program rules relating to residency, social security numbers, combined allotments, excluded resources, contract income, self-employment expenses, certification periods, the notice of adverse action, recertification, and suspension. The amendments simplify regulatory requirements and increase State agency flexibility. The rule also makes several technical amendments to Food Stamp Program rules.

DATES: This final rule is effective November 18, 1996 and must be implemented no later than May 1, 1997, except the provisions of 7 CFR 273.14(b)(2), which have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. The provisions of this section will become effective upon approval. FCS will publish a notice in the Federal Register announcing the effective date and implementation date.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305-2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The reporting and recordkeeping burden associated with the application, certification, and continued eligibility of food stamp applicants is approved under OMB No. 0584-0064. The burden for applications, including applications for recertification, is estimated to average .2290 hours per response.

To determine the continued eligibility of food stamp recipients, State welfare agencies must recertify eligible households whose certification periods have expired, and households are required to submit a recertification form. Section 273.14(b)(2) of this rule authorizes State agencies to use a modified form of the application used for initial application.

The amendments to 7 CFR 273.14(b)(2) made by this rule do not impose any new collection requirements. The methodology used to

determine the current burden estimates for all applications assumes that some households will be recertified more often than other households. The methodology also assumes that every applicant will complete every line item on the application form; therefore, the burden is overestimated for some households and underestimated for others. Based on this methodology, we believe the current burden estimate sufficiently reflects the potential reduced burden resulting from use of a modified recertification form.

Comments. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250. Comments and recommendations on the proposed information collection must be received by December 16, 1996.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Public Participation

This rule contains technical amendments at 7 CFR 272.1(g)(74), 273.2(f)(1), 273.4(a)(2), 273.4(a)(9), 273.4(a)(11), 273.20, 278.1(h), and 279.3 which were not part of the proposed rule published January 11, 1995 and are unrelated to the provisions of the proposed rule. These amendments are being published without an opportunity

for public comment and will become effective 30 days following publication. The amendments are technical in nature and public comment would not be useful or necessary. Ellen Haas, Under Secretary for Food, Nutrition, and Consumer Services, has determined that, in accordance with 5 U.S.C. 553(b)(3)(B), good cause exists for publishing the technical amendments without taking public comment.

Background

On January 11, 1995, the Department published a proposed rule at 60 FR 2703 in which it proposed to revise Food Stamp Program regulations in response to State agency requests for waivers of Program requirements and suggestions for simplification of rules. In some cases, we proposed to amend the regulations to incorporate guidance we had already provided to State agencies. In other instances, we proposed to modify Program rules to provide more consistency with requirements in the Aid to Families with Dependent Children (AFDC) Program. Comments were solicited on the provisions of the proposed rule through March 13, 1995, and a total of 26 comments were received. This final action addresses the commenters' concerns. Readers are referred to the proposed rule for a more complete understanding of this final action.

Combined allotments—7 CFR 273.2(i) and 274.2(b)

In the January 11, 1995 rule, the Department proposed changes to the regulations on issuance of combined allotments. At the time the proposed rule was published, the regulations at 7 CFR 274.2(b)(3) provided that eligible households applying after the 15th of the month that qualify for expedited service would receive a combined allotment (prorated benefits for the application month and full benefits for the subsequent month) if they supplied all required verification within the 5-day expedited service timeframe. If the household did not supply all required verification within the expedited service timeframe, the household received a prorated amount for the initial month issued within 5 days of application (with waived verification, if necessary, to meet the expedited timeframe) and a second allotment for the subsequent month issued after all necessary verification has been obtained. In the January 11, 1995 rule, the Department proposed to amend the regulations to require that if an eligible household applies for food stamps after the 15th of the month and is entitled to expedited service, it would receive the prorated

initial month's allotment and the full allotment for the second month within the expedited timeframe. Additional verification requirements would be postponed until the end of the second month. The proposed amendments would bring the regulations into conformance with current food stamp policy on combined allotments, as announced in a June 16, 1993, policy memorandum issued to FCS regional Food Stamp Program directors.

The Department also proposed to reorganize the regulations on combined allotments. At the time the proposed rule was published, the regulations on issuance of a combined allotment were contained at 7 CFR 274.2(b)(2), (3), and (4). The Department proposed to move those combined allotment requirements out of 7 CFR 274.2(b) and into 7 CFR 273.2(i)(4). In 7 CFR 274.2, the Department proposed to delete paragraphs (b)(2), (3), and (4), and redesignate paragraphs (b)(1), (c), (d), and (e) as paragraphs (b), (d), (e), and (f), respectively. The Department proposed to add two sentences to the end of redesignated paragraph (b) which would contain the requirements for issuing benefits to expedited service households. The Department also proposed to add a new paragraph (c) which would contain the provision of former paragraph (b)(2) concerning the State agency option to issue the combined benefits in one allotment or two, as long as they are provided at the same time and reference the combined allotment regulations at 7 CFR 273.2.

The above proposed organizational changes, with the exception of moving the combined allotment requirements formerly contained at 7 CFR 274.2(b)(2), (3), and (4) into 7 CFR 273.2, have already been finalized in the Food Stamp Program's Benefit Delivery Rule, published on April 25, 1995 at 60 FR 20178. In this rule, therefore, the Department is only finalizing the provisions moving the requirements formerly contained in 7 CFR 274.2(b) to 7 CFR 273.2.

In the January 11, 1995 rule, the Department proposed to revise the regulations at 7 CFR 273.2(i)(4)(iii)(C), and to add two new paragraphs, 273.2(i)(4)(iii)(D) and (E). The proposed regulations at 7 CFR 273.2(i)(4)(iii)(C) contained the requirements formerly contained at 7 CFR 274.2(b)(2), which concerned combined issuance for households certified under normal processing timeframes. The proposed regulations at 7 CFR 273.2(i)(4)(iii)(D) contained the new requirement that a household which applies after the 15th of the month and is processed under expedited service procedures shall be

issued a combined allotment consisting of prorated benefits for the initial month of application and benefits for the first full month of participation. In these cases, any unsatisfied verification requirement would be postponed until the end of the first full month. The proposed regulations at 7 CFR 273.2(i)(4)(iii)(E) contained the requirements formerly contained at 7 CFR 274.2(b)(4), which concerned households not entitled to combined allotments.

The Department received three comments on the proposed changes. One commenter opposed the proposed relocation of the combined allotment requirements from 7 CFR 274.2(b) to 273.2(i). The commenter believed that the relocation only promoted confusion. As noted above, however, the proposal to remove the combined allotment requirements from 7 CFR 274.2(b) was finalized in the Benefit Delivery Rule. However, we now believe it is preferable to separate the combined allotment provisions for households processed under the normal 30-day processing standard from those for households certified under the expedited service provisions of 7 CFR 273.2(i). Therefore, we are adding a new paragraph to 7 CFR 273.2(g), *Normal processing standard*, to include the provisions of proposed § 273.2(i)(4)(iii)(C) and former 7 CFR 274.2(b)(2) concerning combined allotments for households processed under the 30-day requirement. This paragraph is titled *Combined allotments* and is designated § 273.2(g)(2). Current paragraph (g)(2) is redesignated as paragraph (g)(3). Proposed paragraphs 273.2(i)(4)(iii)(D) and (E) are paragraphs 273.2(i)(4)(iii)(C) and (D) in this final rule.

The second commenter asked that the regulations at 7 CFR 273.2(b) and 274.2(b) specify that combined allotments apply only for those households initially applying for food stamps for which proration is a factor. As noted above, the regulations at 7 CFR 274.2 no longer provide detailed requirement for use of combined allotments. The regulations at 7 CFR 273.2(b) do not address combined allotments; however, the Department believes that the commenter meant 7 CFR 273.2(i). The Department believes that the proposed regulations at 7 CFR 273.2(i)(4)(iii)(D) are very specific as to when a combined allotment can be issued. Therefore, the Department is not adopting the commenter's suggestion and is adopting the proposed provisions as final.

Another commenter thought that in relocating instructions on combined

allotments from 7 CFR 274.2(b) to 7 CFR 273.2(i), the Department deleted the provision that the combined allotment may be in the form of two allotments issued at the same time. As indicated above, the Benefit Delivery rule moved this provision from 7 CFR 274.2(b) to new paragraph 274.2(c). In this rule, we are including a reference to 7 CFR 274.2(c) in revised paragraph 273.2(i)(4)(iii)(C) and new paragraph 273.2(g)(2).

In the January 11, 1995 rule, the Department proposed additional changes to the regulations at 7 CFR 273.2(i)(4) to bring those regulations into conformance with the new combined allotment requirements. The regulations at 7 CFR 273.2(i)(4)(iii)(B) currently require that a household which applies after the 15th of the month and is assigned a certification period of longer than one month, must have all postponed verification completed before it can be issued its second month's benefits. Migrant households which apply after the 15th of the month and are assigned certification periods of longer than one month must provide all postponed verification from within-State sources before the second month's benefits can be issued, and must provide all postponed verification from out-of-State sources before the third month's benefits are issued. Because of the change in policy regarding combined allotments, eligible households that are entitled to expedited service and apply after the 15th of the month must now receive a combined allotment which includes their first and second month's benefits. Since these households will have already received their second month's benefits, postponed verification must now be completed prior to issuance of the third month of benefits. As noted above, this is current policy for migrants in regard to completing out-of-State verification, and the Department proposed to broaden the requirement to make it mandatory for all households which apply after the 15th of the month and are assigned certification periods of longer than one month. The Department proposed to amend 7 CFR 273.2(i)(4)(iii)(B) accordingly. The Department also proposed to make a conforming amendment to 7 CFR 273.10(a)(1)(iv), which contains a verification requirement similar to that currently contained in 7 CFR 273.2(i)(4)(iii)(B). The Department received no comments on the proposed changes and is adopting them as final.

Under current regulations at 7 CFR 273.2(i)(4)(iii)(B), when households which apply for benefits after the 15th

of the month provide the required postponed verification, the State agency is required to issue the second month's benefits within 5 working days from receipt of the verification or the first day of the second calendar month, whichever is later. Since the proposed changes in combined allotment procedures required that households be issued the prorated initial month's allotment and the full allotment for the second month within the expedited timeframe, the requirement at 7 CFR 273.2(i)(4)(iii)(B) is no longer applicable and the Department proposed to remove it in the January 11, 1995 rule. The Department received no comments on the proposal and is adopting it as final.

Current regulations at 7 CFR 273.2(i)(4)(iii)(C) require that households which are eligible for expedited service and that apply after the 15th of the month must be issued their second month's benefits on the first working day of the second calendar month, not the day benefits would normally be issued in a State using staggered issuance. Because of the potentially lengthy period of time between issuance of the combined allotment for the month of expedited service and the first full month of participation and issuance of an allotment for the third month of participation in a staggered issuance system, the Department proposed to retain that issuance requirement at 7 CFR 273.2(i)(4)(iii)(C) for the third month of benefits. The Department proposed to add a new paragraph 7 CFR 273.2(i)(4)(iii)(F) which required that in States with staggered issuance, households be issued their third allotment by the first working day of the third calendar month. For allotments in subsequent months, State agencies would employ their normal issuance mechanisms.

The proposal that households be issued their third allotment by the first working day of the third calendar month received a substantial number of negative comments. Twelve commenters wrote to oppose the provision. The commenters felt that the provision would impose a tremendous administrative burden on State agencies. These commenters claimed that the proposed change would require costly computer reprogramming or necessitate a manual system for issuing benefits in the third month that would increase workloads and be error prone. In addition, commenters believed that households would be better served if they received their third month's allotments on the normal issuance date rather than on the first of the month. Early issuance in the third month could

mean that the household would have to wait as long as six or seven weeks before receiving benefits for its fourth month of participation. One commenter did support the proposed provision, on the grounds that it promotes consistency with current policy for migrants.

The Department accepts the arguments raised by the 12 commenters who opposed the proposed provision at 7 CFR 273.2(i)(4)(iii)(F) and is deleting it from this final rule. A household that receives a combined allotment and resides in a State with a staggered issuance system will, at some point during its certification period, have to stretch its benefits to cover a period longer than one month. The proposed procedure would not have prevented that, but would have imposed an unnecessary administrative burden on State agencies. Therefore, the Department is not adopting the proposed provision.

Current regulations at 7 CFR 273.2(i)(4)(i)(B) require that households entitled to expedited service furnish an SSN for each household member before the first full month of participation. Households that are unable to provide the required SSNs or who do not have one prior to the first full month of participation can participate only if they satisfy the good cause requirements specified in 7 CFR 273.6(d).

Because of the change in combined allotment policy, eligible households that apply after the 15th of the month and are entitled to expedited service can receive their second month's benefits without having to furnish an SSN. In the preamble of the proposed rule, the Department stated its intention to revise the regulations at 7 CFR 273.2(i)(4)(i)(B) to require that households entitled to expedited service that apply after the 15th of the month furnish an SSN for each person prior to the third month of participation. The Department received no negative comments on the proposal. One commenter, however, did note that the proposed change to 7 CFR 273.2(i)(4)(i)(B) discussed in the preamble was not accompanied by the proposed new regulatory language. The Department apologizes for the omission, but believes the public was given sufficient notice of the Department's intent. Therefore, the Department is adopting the proposed change to 7 CFR 273.2(i)(4)(i)(B) discussed in the preamble to the proposed rule as final in this rule.

Current regulations at 7 CFR 273.2(i)(4)(iii) provide that households that are certified for expedited service and have postponed verification requirements may be certified for either the month of application or for longer

periods, at the State agency's option. 7 CFR 273.2(i)(4)(iii)(A) currently addresses verification requirements for households that are certified only for the month of application, and 7 CFR 273.2(i)(4)(iii)(B) currently addresses verification requirements for households that are certified for longer than the month of application. Neither section of the regulations addresses verification requirements for households that apply before the 15th of the month. The Department proposed to eliminate this deficiency in the January 11, 1995 rule by amending 7 CFR 273.2(i)(4)(iii)(A) to address verification requirements for households that apply on or before the 15th of the month and to amend 7 CFR 273.2(i)(4)(iii)(B) to address verification requirements for households that apply after the 15th of the month. The Department received no comments on these proposals and is adopting them as final.

Current regulations at 7 CFR 273.2(i)(4)(iii) give State agencies the option of requesting any household eligible for expedited service which applies after the 15th of the month to submit a second application (at the time of initial certification) if the household's verification requirements have been postponed. Under current policy, that second application would be denied for the first month and acted on for the second month. However, now that expedited service households will be receiving a combined allotment of their first and second month's benefits, under our proposal, the second application would be denied for both the first and second months and acted on for the third month. Believing that current regulations do not allow for this procedure, the Department proposed to amend the regulations at 7 CFR 273.10(a)(2)(i) to require that if a household files an application for recertification in any month in which it is receiving food stamp benefits, the State agency shall act on that application for eligibility and benefit purposes starting with the first month after the current certification period expires.

Several commenters wrote to point out that the text of the proposed regulatory change to 7 CFR 273.10(a)(2)(i) did not appear in the proposed rule. The proposed change was inadvertently omitted, and the Department apologizes for any confusion the omission may have caused.

Three commenters objected to the proposed procedure as described in the preamble. One thought it was unclear whether the proposed provision was tied to the State option of requesting the

applicant for expedited service applying after the 15th of the month to submit a second application when verification is postponed, or if it would be appropriate for all recertifications. The commenter thought that if it applied to all cases, it could prove to be an administrative problem. Two commenters were concerned that the information on the application, if kept pending too long, would be outdated. One asked if a household certified for 12 months filed an application in its third month of eligibility, would the State agency have to keep track of and use the application for a certification period some 10 months later.

The Department agrees with the commenters that the proposed language is unclear. The proposed provision was intended to be tied to the State option of requesting that the household applying for expedited service after the 15th of the month submit a second application when verification is postponed. It was meant to apply only in circumstances in which the household has been certified for only the month of application and the subsequent month. In these circumstances, the State agency would deny the second application for both the first and second months and act on it for the third month, as described in proposed section 273.2(i)(4)(iii)(F). It was not the Department's intention that a State agency act on an application that had been submitted more than a month and a half earlier. The Department, therefore, is not amending 7 CFR 273.10(a)(2)(i) to include the procedure. Since the procedure is only valid in instances in which the household is entitled to expedited service and applies after the 15th of the month, the Department thinks it would only promote confusion to have a reference to the procedure in any section of the regulations other than the section on expedited service. The Department is also removing discussion of the second application option from 7 CFR 273.2(i)(4)(iii)(B). The procedures for acting on a second application are already addressed in detail in 7 CFR 273.2(i)(4)(iii)(E) of this rule and the Department sees no advantage to repeating that information at 7 CFR 273.2(i)(4)(iii)(B).

One commenter noted that proposed regulatory language at both 7 CFR 273.2(i)(4)(iii)(A) and (B) includes the requirement that during the certification interview, the State agency should give the household a recertification form and schedule an appointment for a recertification interview. The commenter thought that it was not clear that the requirement applied only if the

State agency chooses the option at 7 CFR 273.2(i)(4)(iii) to require a household entitled to expedited service that applies after the 15th of the month to submit a second application. The commenter felt that the requirement would be an unnecessary burden to State agencies that do not choose to require a second application.

The Department agrees with the commenter that the requirement as proposed is unclear and has decided to remove the requirement from both 7 CFR 273.2(i)(4)(iii)(A) and (B). The Department believes the requirement provides unnecessary instruction to State agencies.

The same commenter raised a question on the proposed language at 7 CFR 273.2(i)(4)(iii)(D). That section requires that combined allotments be issued in accordance with requirements at 7 CFR 274.2(c). The commenter thought that the benefits should be issued in accordance with the requirements at 7 CFR 273.2(i)(3)(i), which address expedited service processing standards. The proposed regulations at 7 CFR 273.2(i)(4)(iii)(D) address combined allotments, which have different issuance requirements than normal expedited benefits. The issuance requirements for combined allotments are contained at 7 CFR 274.2(c).

Residency—7 CFR 273.3

Current rules at 7 CFR 273.3 require food stamp households to live in the project area in which they apply unless the State agency has made arrangements for particular households to apply in nearby specified project areas. In order to increase consistency with the AFDC program and the Adult Assistance programs under Titles I, X, XI, and XVI of the Social Security Act, which require that applicants reside in the State but have no project area requirement, the Department proposed in the January 11, 1995 rulemaking to amend 7 CFR 273.3 to give State agencies the option of permitting households to live anywhere in the State rather than in the project area in which they apply for benefits. Under the proposal, State agencies still retained the authority to designate limited project areas and restrict where a given household could apply.

The Department also proposed to add a new paragraph (iii) to 7 CFR 273.2(c)(2) to address application processing timeframes in States which opt to allow Statewide residency. Under the proposal, if a State agency does not require that households apply in specified project areas, the application processing timeframes would begin the

day the application is received by any office.

The Department also proposed a second amendment to 7 CFR 273.3 to clarify the requirements for transferring food stamp cases between project areas. The Department proposed to amend 7 CFR 273.3 to state that when a household moves within a State, the State agency may either require the household to reapply in the new project area or transfer the case from the previous project area to the new one and continue the household's certification without requiring a new application. If the State agency chooses to transfer the case, it must act on changes in the household's circumstances resulting from the move in accordance with 7 CFR 273.12(c) or 7 CFR 273.21. The State agency must also ensure that potential client abuse of case transfers from project area to project area is identifiable through the State agency's system of duplicate participation checks required by 7 CFR 272.4(f). Finally, the State agency must develop transfer procedures to guarantee that the transfer of a case from one project area to another does not affect the household adversely.

We received six comments on the proposal. Five commenters wrote to support the proposal, though one of the five felt that the new provision might be costly to implement and may confuse State staff. Since Statewide residency is an option for State agencies, however, each State can determine for itself if the change in residency requirements is beneficial.

The sixth commenter asked how the change to Statewide residency would affect the definition of mail loss liability as it relates to project areas in 7 CFR 276.2(b)(4)(i). The change to Statewide residency should have no effect on State agencies' mail loss liabilities. The Department believes that there is a clear distinction between Statewide residency for certification purposes and Statewide reporting of mail issuance. A State agency could opt for Statewide residency yet retain project area designations for purposes of mail loss liability.

No negative comments were received on the proposed amendment to 7 CFR 273.3, and the Department is adopting it as final without change.

Social Security Numbers for Newborns—7 CFR 273.2(f)(1)(v), 7 CFR 273.6(b)

Current regulations at 7 CFR 273.6(a) require an applicant household to provide the State agency with the social security number (SSN) of each household member. A household

member who does not have an SSN must apply for one before he or she can be certified, unless there is good cause for such failure as provided in 7 CFR 273.6(d). If a household member refuses or fails without good cause to apply for an SSN, the individual is ineligible to participate.

In the January 11, 1995 proposed rule, the Department proposed to amend food stamp regulations to address the Social Security Administration's (SSA) "Enumeration at Birth" (EAB) program. Under EAB, parents of a newborn child may apply for an SSN for the child when the child is born if this service is available at the hospital. Most hospitals give parents Form SSA-2853, "Message From Social Security." This receipt form, which describes the EAB process and how long it will take to receive an SSN, contains the child's name and is signed and dated by a hospital official. It is accepted by State agencies for welfare or other public assistance purposes. In the January 11, 1995 rule, the Department proposed an amendment to 7 CFR 273.2(f)(1)(v) to allow a completed Form SSA-2853 to be acceptable as proof of SSN application for an infant. The Department received no negative comments on this proposal and is adopting it as final.

Current regulations at 7 CFR 273.6(d) allow for good cause exceptions to the SSN requirement in cases in which a household is unable to provide or apply for an SSN for a newborn baby immediately after the baby's birth. The regulations allow the household member without an SSN to participate for one month in addition to the month of application. However, good cause does not include delays due to illness, lack of transportation or temporary absences of that household member from the household, and good cause must be shown monthly in order for the household member to continue to participate.

To avoid a delay in adding a new member to the household, the Department proposed to amend 7 CFR 273.6(b) to provide that, in cases in which a household is unable to provide or apply for an SSN for a newborn baby immediately after the baby's birth, a household may provide proof of application for an SSN for a newborn infant at its next recertification. If the household is unable to provide an SSN or proof of application at its next recertification, the State agency would determine if the good cause provisions of 7 CFR 273.6(d) are applicable.

The Department received four comments on this provision of the proposed rule. Two commenters

thought that the Department should define "next" recertification period. These commenters indicated that the absence of a definition could be a potential problem when a household reports the addition of a newborn to the State agency in the month before the expiration of the household's certification period. One of the commenters thought that the Department should amend the proposed good cause provisions to allow households with a newborn whose certification period ends in the birth month or in the month following the birth month with the same timeframes allowed those households with a newborn who have 10 to 12 months left in the certification period.

The Department acknowledges the difficulties associated with using the concept of "next certification period" in the proposed provision. Therefore, the Department is revising the provision to allow households to submit an SSN or proof of application for an SSN at their next recertification or within six months following the month in which the baby is born, whichever is later. The Department believes that amending the provision to include a fixed time period will ensure that all households benefit equally from the change in procedures. The Department also believes that six months is sufficient time for households to acquire the necessary materials to apply for an SSN for a newborn. Accordingly, if the household cannot provide an SSN or proof of application at its next recertification after the birth of a new household member or within six months of the month in which the baby is born, the State agency shall determine if the good cause provisions of 7 CFR 273.6(d) are applicable.

Another commenter noted that AFDC does not have a good cause provision in its SSN regulations, and that the application for a newborn must be done by the end of the month following the month in which the mother is released from the hospital. The Department recognizes that the Food Stamp Program's good cause provision does not conform with the requirements of the AFDC program. The Department believes, however, that the provision is advantageous to participating households, which frequently encounter difficulty obtaining certified copies of birth certificates needed to apply for an SSN, and that this offsets the need for conformity in this area.

Another commenter thought that the proposed change to the SSN requirement for newborns conflicted with expedited service processing requirements, and requested that final regulations clarify whether the newborn

SSN policy supersedes that under expedited processing.

Current regulations at 7 CFR 273.2(i)(4)(i)(B) require that households entitled to expedited service furnish an SSN for each person or apply for one for each person before the first full month of participation. Those household members unable to provide the required SSNs or who do not have one prior to the first full month of participation are allowed to continue to participate only if they satisfy the good cause requirements with respect to SSNs specified in 7 CFR 273.6(d).

To avoid a conflict between the new SSN requirement for newborns and expedited service processing requirements, the Department is amending the expedited service requirements at 7 CFR 273.2(i)(4)(i)(B) to allow a newborn to participate for up to six months following the month of its birth before providing an SSN or proof of application for an SSN.

Funeral Agreements—7 CFR 273.8(e)(2)

Current regulations at 7 CFR 273.8(e)(2) exclude the value of one burial plot per household member from resource consideration. In the proposed rule, we proposed to adopt a funeral agreement policy similar to that of the AFDC program. AFDC regulations at 45 CFR 233.20(a)(3)(i)(4) exclude from resource consideration “bona fide funeral agreements (as defined and within limits specified in the State plan) of up to a total of \$1,500 of equity value or a lower limit specified in the State plan for each member of the assistance unit.” Accordingly, we proposed to amend 7 CFR 273.8(e)(2) to allow for an exemption from resource consideration of up to \$1,500 for bona fide, pre-paid funeral agreements that are accessible to the household. Funeral agreements that are inaccessible to a household were not affected by the proposed rule, as they are excluded from resource consideration under the provisions of 7 CFR 273.8(e)(8).

Three commenters supported this provision. One commenter misunderstood the proposal and thought that the exclusion of up to \$1,500 in a bona fide funeral agreement per household member replaced the exclusion of one burial plot per household member currently at 7 CFR 273.8(e)(2). The funeral agreement exclusion is in addition to the exclusion of one burial plot per household member and is not intended to replace the burial plot exclusion. The provisions of the proposed rule are adopted as final.

Determining income—7 CFR 273.10(c)(2)

Current regulations at 7 CFR 273.10(c)(2)(iii) provide that households receiving public assistance payments (PA) or general assistance (GA), Supplemental Security Income (SSI), or Old-Age, Survivors, and Disability Insurance (OASDI) benefits on a recurring monthly basis shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one month and none in the next month. In the proposed rule, it was noted that there are other instances in which a household may receive a disproportionate share of a regular stream of income in a particular month. For example, an employer may issue checks early because the normal payday falls on a weekend or holiday. We proposed, therefore, to amend 7 CFR 273.10(c)(2)(iii) to specify that income received monthly or semimonthly (twice a month, not every two weeks) shall be counted in the month it is intended to cover rather than the month in which it is received when an extra check is received in one month because of changes in pay dates for reasons such as weekends or holidays.

Three commenters supported the proposed provision. A fourth commenter objected to the proposed provision being limited to income received on a monthly or semimonthly basis, arguing that income which is received on a weekly or biweekly basis may also be received early (or late) because the normal payday falls on a weekend or a holiday. The commenter thought that any type of payment schedule that is altered due to a holiday, weekend, or vacation should not affect a household's eligibility for food stamps.

Current regulations at 7 CFR 273.10(c)(2)(1) already address fluctuations in income that is received on a weekly or biweekly basis. The regulations require that 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. Since conversion addresses the receipt of a fifth check (in weekly pay) or a third check (in biweekly pay), the Department is not adopting the commenter's suggestion. The provision is adopted as proposed.

Contract Income—7 CFR 273.10(c)(3)(ii)

Section 5(f)(1)(A) of the Food Stamp Act, 7 U.S.C. 2014(f)(1)(A), provides that households which derive their annual income (income intended to meet the

household's needs for the whole year) from contract or self-employment shall have the income averaged over 12 months. Current regulations at 273.10(c)(3)(ii) implement this provision of the Act, stating that “[h]ouseholds 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.” The regulations at 7 CFR 273.11(a)(1)(iii) address how self-employment income which is not a household's annual income and is intended to meet the household's needs for only part of the year should be handled. 7 CFR 273.11(a)(1)(iii) provides that “[s]elf-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.” The regulations, however, fail to specify how contract income which is not a household's annual income and is intended to meet the household's needs for only part of the year should be handled. The Department proposed to rectify this omission in the proposed rule by amending 7 CFR 273.10(c)(3)(ii) to clarify that contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be averaged over the period the income is intended to cover. The Department received two comments supporting the proposed provision, and is adopting the provision as final.

Certification Periods—7 CFR 273.10(f)

In the January 11, 1995 publication, the Department proposed changes in the certification period requirements at 7 CFR 273.10(f) to allow State agencies more flexibility in aligning the food stamp recertification and the PA/GA redetermination in joint cases. Section 3(c) of the Food Stamp Act, 7 U.S.C. 2012(c), requires that the food stamp certification period of a GA or PA household coincide with the period for which the household is certified for GA or PA. However, because PA/GA and Food Stamp Program processing standards and the period for which benefits must be provided are not the same, it is often difficult to get the certification periods for the programs to coincide. The Department proposed three procedures which State agencies could employ to align PA/GA and food stamp certification periods. Under the first procedure, when a household is certified for food stamp eligibility prior to an initial determination of eligibility for PA/GA, the State agency would

assign the household a food stamp certification period consistent with the household's circumstances. When the PA/GA is approved, the State agency would reevaluate the household's food stamp eligibility. The household would not be required to submit a new application or undergo another face-to-face interview. If eligibility factors remained the same, the food stamp certification period would be extended up to an additional 12 months to align the household's food stamp recertification with its PA/GA redetermination. The State agency would be required to send a notice informing a household of any such changes in its certification period. At the end of the extended certification period the household would be sent a Notice of Expiration and would have to be recertified before being determined eligible for further food stamp assistance, even if the PA/GA redetermination had not been completed. In the event that a household's PA/GA redetermination is not completed at the end of the food stamp certification period and, as a result, the household's food stamp and PA/GA certification periods are no longer aligned, the State agency could again employ the procedure described above to align those certification periods.

The second procedure for aiding State agencies in aligning PA/GA and food stamp certification periods was to allow State agencies to recertify a household currently receiving food stamps when the household comes into a State office to report a change in circumstances for PA/GA purposes. At that time, the State agency would require the household to fill out an application for food stamps and to undergo a face-to-face interview. If the household was determined eligible to continue receiving food stamps, its current certification period would end and a new one would be assigned.

The third procedure for aiding State agencies in aligning PA/GA and food stamp certification periods was to allow State agencies to assign indeterminate certification periods to households certified for both food stamps and PA/GA. Under this procedure, a household's food stamp certification period would be set to expire one month after the household's scheduled PA/GA redetermination, so long as the period of food stamp certification did not exceed 12 months. Therefore, if a food stamp certification were set for 7 months and would expire the month after the month the PA redetermination was due, but the PA redetermination was not done on time, the food stamp certification period

could be postponed up to an additional 5 months to align food stamp recertification and PA/GA redetermination. In the 12th month, the household would have to be recertified for food stamp purposes, even if the PA redetermination had not yet been completed.

The Department received 12 comments on the proposed procedures for aligning certification periods. Five commenters wrote in support of all three proposed options. Three commenters suggested further changes to those procedures. Two asked that the options for aligning food stamp and PA/GA certification periods apply for aligning food stamp certification periods and those of the Medicaid program and other medical programs. One commenter suggested a fourth option in which food stamp certification reviews could be completed at the same time as AFDC reviews or applications. The remaining commenters raised various questions or criticized the proposed options. One commenter objected that the proposed changes did not address the 24-month certification period requirement for monthly reporting households residing on Indian reservation land. Another thought that the third option failed to address required client notices. One commenter thought that the first and third options appear error prone because specific criteria for extending certification periods is not provided. Two commenters felt that the second and third options would increase State agency workload rather than reduce it.

The Department offered the options in order to simplify administration of the requirement in section 3(c)(1) of the Act that PA/GA certification periods be aligned with food stamp certification periods. In light of the comments received on the proposed provision, and the Department's commitment to extending flexibility to State agencies, the Department is further simplifying the requirements at 7 CFR 273.10(f)(3). The section is revised to allow the State agency to shorten or extend a household's food stamp certification period 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. Although this rule offers considerable flexibility in aligning the food stamp and PA/GA recertifications, we anticipate that an extension of no more than 4 months will be necessary in most cases. The extension would generally be needed because of the difference in approval dates for food stamps and the other

program in a joint PA or GA case, and extension of the food stamp certification for a few months would allow for alignment under normal circumstances. 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.

In response to commenters' suggestions, the Department is further revising 7 CFR 273.10(f)(3) to offer State agencies the option of extending or shortening certification periods as noted above in order to align them with certification periods in Medicaid and other medical programs. The Department is offering this as an option instead of a requirement because the Food Stamp Act does not require that the food stamp certification period of a household also receiving Medicaid or other medical programs coincide with the period for which the household is certified for those programs.

Calculating Boarder Income—7 CFR 273.11(b)

Current rules at 7 CFR 273.11(b) provide that State agencies must use the maximum food stamp allotment as a basis of establishing the cost of doing business for income received from boarders when the household does not own a commercial boardinghouse. Boarders are not included as members of the household to which they are paying room and board. The households receiving the room and board payments must include those payments as self-employment income, but can exclude that portion of the payments equal to the cost of doing business. The rules provide that the cost of doing business is either (1) the maximum food stamp allotment for a household size equal to

the number of boarders; or (2) the actual documented cost of providing room and meals, if that cost exceeds the maximum allotment.

In the proposed rule, the Department proposed to revise 7 CFR 273.11(b)(1)(ii)(C) to provide State agencies with an additional option for calculating boarder income. Under the proposal, State agencies would have the option to use actual costs, the maximum allotment for a household size equal to the number of boarders, or a flat amount or fixed percentage of gross income from boarders to determine the cost of doing business of households with boarders. The Department noted in the proposed rule that the AFDC program used a flat percentage equal to 75 percent of the boarder-generated income (45 CFR 233.20(a)(6)(v)(B)). We, however, did not propose a percentage limit, but requested suggestions on an appropriate percentage from commenters.

We received 11 comments on the proposed provision. One commenter recommended that we set the percentage of gross income at 75 percent. A second commenter suggested that we use the same percentage limit as is used in the AFDC program. A third commenter said that they were not opposed to an additional method of calculating boarder income as long as they are able to coordinate it with their AFDC program. Another commenter said that the AFDC program in their State does not provide for an exclusion of 75 percent of boarder-generated income. It provides for the exclusion of the actual cost of doing business. If that cost is not documented, or if it is below \$60 a month, the State agency excludes \$60 as the cost of doing business. Another commenter suggested not setting a percentage limit, but allowing State agencies to use a percentage that reflects circumstances in their State.

Since there was no consensus among commenters on the percentage of gross income from boarders that should be used to determine the cost of doing business of households with boarders, the Department has decided to retain the language of the proposed rule and allow State agencies to set their own flat amount or fixed percentage of boarder-generated income to determine the cost of doing business for households with boarders. As in the proposed rule, the method used to determine the flat amount or fixed percentage must be objective, justifiable, and stated in the State's food stamp manual. If the State agency selects the fixed percentage option to determine the cost of doing business for households with boarders, it must give households the opportunity to claim actual costs.

One commenter asked that the final rule clearly reflect that it is the State agency, not the household, that chooses the options available for the household to use as a cost of doing business. Another commenter asked if the State agency must choose only one of the three proposed options and apply it to all households that do not opt to use actual business expenses, or can a household or State agency choose any of the three options on a case-by-case basis.

The Department believes that the household should be allowed to choose the method used to determine its boarder-generated income. The Department is amending the proposed provision at 7 CFR 273.11(b)(1)(ii) to clearly state this policy.

Day Care Providers—§ 273.11(b)(2)

Under current regulations at 7 CFR 273.11(a)(4)(i), households which provide in-home day care can claim the cost of meals provided to individuals in their care as a cost of doing business, provided they can document the cost of each meal. In the proposed rule, the Department proposed to allow households who are day care providers to use a standard amount per individual as a cost of doing business. The Department believed that use of a standard reimbursement rate (standard) for the cost of providing day care would eliminate the burden on day care providers to document itemized costs incurred for producing the income and would increase the benefits for households that fail to adequately document business costs. Use of a standard would also decrease the amount of time needed to process self-employment cases of this type and reduce payment errors.

Under the proposed provision, State agencies would be required to inform households of their opportunity to verify actual meal expenses and use actual costs if higher than the fixed amount. When establishing a standard amount, State agencies would take into account the differences in cost for full-day and part-day care. Households that are reimbursed for the cost of meals provided to individuals in their care, for example through the FCS Child and Adult Care Food Program, would not be able to claim the standard but could claim actual expenses that exceed the amount of their reimbursement.

One commenter found the preamble of the proposed rule confusing, noting that it begins and ends with a discussion of the cost of providing meals by day care providers, yet in the body refers to allowing use of a standard for "determining self-employment

expenses," which the commenter interpreted to mean that all allowable costs could be standardized if they are incurred as a cost of doing business. The commenter asked if that is what the Department is proposing.

The proposed standard is intended to cover only the costs of meals and not other self-employment expenses that the household providing in-home day care may incur. The purpose of the provision was to incorporate into regulations a procedure found to be effective through the Department's waiver process. As noted in the proposed rule, several State agencies were granted waivers to use a flat dollar amount, such as \$5 a day, or to use the FCS Child and Adult Care Food Program reimbursement rates, to cover the cost of meals provided by day care households to individuals in their care instead of requiring the households to document actual meal costs. Those State agencies have reported that use of a standard benefits households by eliminating the need for them to keep extensive records on actual meal costs. It is also advantageous to the State agencies as it eliminates the need for workers to verify actual meal costs.

Another commenter thought that the proposed rule was unclear as to whether or not the standard reimbursement amount had to be established separately for food stamps or whether a reimbursement amount approved for use in a State public assistance (PA) program could be used without separate approval from FCS.

It is the Department's intention that State agencies develop their own meal cost standards. State agencies are free, therefore, to use the same standard as is used in their PA or general assistance programs. Furthermore, State agencies do not need to seek departmental approval of the standard they choose to use. State agencies must, however, inform households of their right to verify actual meal expenses and use those actual costs if they exceed the standard amount.

Two commenters requested further clarification on the Department's recommendation in the proposed rule that, when establishing a standard amount, State agencies take into account the differences in cost for full-day and part-day care. One commenter wanted to know if it meant that the State agency should have separate standards for part-day and full-day care. The other requested a definition of part-time.

As noted above, the Department intends for State agencies to develop their own meal standards. The statement in the proposed rule that State agencies consider the differences in part-day and full-day care when setting

the standard was, therefore, only a recommendation, and the Department is not requiring State agencies to differentiate between the two when creating a standard. Consequently, the Department is not providing a definition of part-day care, but will leave it up to State agency discretion.

The comments received on the proposed provision requested clarification of the preamble and not changes to the regulatory language of the provision. Therefore, the Department is adopting the proposed amendment to 7 CFR 273.11(b)(2) as final without change.

Exemption from Providing a Notice of Adverse Action—7 CFR 273.13(b)

Current regulations at 7 CFR 273.13(a) require State agencies to send a notice of adverse action (NOAA) to a household prior to any action to reduce or terminate the household's benefits, except as provided in 7 CFR 273.13(b). That section does not include an exception to the NOAA requirements when mail sent to a household is returned with no known forwarding address. The AFDC regulations at 45 CFR 205.10(a)(4)(ii) do not require an advance notice of adverse action in this situation. In the proposed rule, the Department suggested adding an exemption from sending a NOAA if agency mail has been returned with no known forwarding address. Since it is unlikely that the Postal Service can deliver a NOAA mailed to an address which is no longer correct, it is reasonable to specify in regulations that no notice is required if delivery cannot be reasonably expected.

Four commenters supported the proposed provision. One commenter noted, however, that although the cited AFDC regulation does not require advance notice if delivery cannot be reasonably expected, notice is still required.

The Department does not believe it is necessary to send a notice to an address known to be incorrect. A recipient whose benefits were reduced or terminated and who did not receive a notice would still be entitled to a fair hearing in accordance with 7 CFR 273.15 and restoration of benefits, as provided in 7 CFR 273.17. However, to allow State agencies to use the same procedure for food stamps and AFDC, we are adding a new paragraph (c) to 7 CFR 273.13 to provide that State agencies may at their option send an adequate notice to households whose mail has been returned with no known forwarding address.

Recertification—7 CFR 273.14

In the January 11, 1995 rule, the Department proposed several changes to current regulations at 7 CFR 273.14 which govern recertification procedures. The Department proposed a general reorganization of the section in order to provide a clearer expression of recertification requirements. The Department also proposed several changes in recertification procedures which it believed would provide State agencies with more flexibility when recertifying households. Each proposed change is discussed in detail below.

The Department received two general comments on the proposed changes to 7 CFR 273.14, one positive and one negative. One commenter strongly supported all the proposed changes, believing that they will simplify and improve the recertification process. The other commenter thought that the proposed changes clearly added unfunded Federal mandates. The commenter wrote that the discussion in the preamble implied that States were being given options for handling the recertification process but in the proposed regulations only a single process which encourages the State agency to send a recertification form, an interview appointment letter, and a statement of needed verification with each notice of expiration was stated. The commenter felt that the procedure was an unfunded Federal mandate and was counter productive to any automated system based on interactive interviews. The commenter thought that if a State was currently experiencing no problems with the recertification process, there was no need to complicate the process by developing an additional form to use just for recertification or by establishing different procedures.

It was not the Department's intention in the proposed rule to impose new recertification requirements on State agencies. The proposed procedures, which were drawn from State agency waiver requests, were meant only as options which State agencies can employ to simplify the recertification process. State agencies which do not find the proposed options beneficial should not employ them.

1. Reorganization

In the January 11, 1995 rule, the Department proposed to reorganize 7 CFR 273.14 in an attempt to provide a clearer expression of the recertification requirements. Revised section 273.14(a) contained general introductory statements regarding actions the household and the State agency must

take to ensure that eligible households receive uninterrupted benefits. Revised section 273.14(b) contained the requirements for the notice of expiration, the recertification form, the interview and verification. Revised section 273.14(c) contained the filing deadlines for timely applications for recertification. Current sections 273.14(d), (e), and (f) were revised into two new sections 7 CFR 273.14 (d) and (e). New section 7 CFR 273.14(d) combined all of the provisions of the previous sections relating to timeframes for providing benefits when all processing deadlines are met. New section 7 CFR 273.14(e) addressed situations in which the household or the State agency fail to meet processing deadlines.

The Department received no comments on the proposed structural revision of the section and is retaining it in the final rule.

2. Recertification Forms

In the January 11, 1995 rule, the Department proposed to revise 7 CFR 273.14(b)(2) to allow State agencies the option of using a modified application form for recertifying households. This form could be used only for those households which apply for recertification before the end of their current certification period. The State agency would be required to devise its own form, and would have to include on it the information required by 7 CFR 273.2(b)(1)(i), (ii), (iii), (iv) and (v). This information is required by section 11(e)(2) of the Act, 7 U.S.C. 2020(e)(2), and appraises applicants of their rights and responsibilities under the Program. The information regarding the Income and Eligibility Verification System in 7 CFR 273.2(b)(2) may be provided on a separate form. In accordance with section 11(e)(2) of the Act, which requires that the Department approve all deviations from the uniform national food stamp application, all recertification forms would have to be approved by FCS before they could be used.

The Department received three comments on the recertification form proposal. One commenter supported the provision. Another commenter thought that the proposed regulatory language made it mandatory for the State agency to use a recertification form and did not allow the option to use the regular initial application at recertification. The Department had intended to indicate that the proposed recertification form is meant as an option for State agencies and is not mandatory. The Department is revising the proposed language at 7 CFR 273.14(b)(2)(i) to clarify this.

The third commenter noted that if a recertification form is to be used for joint food stamps/SSI processing in accordance with 7 CFR 273.2(k), State agencies must obtain SSA approval as well as FCS approval before using the form. The Department agrees and is revising the proposed language at 7 CFR 273.14(b)(2)(i) to clarify this.

2-A. Face-to-Face Interviews

Under current regulations, State agencies are required to conduct face-to-face interviews with households applying for recertification. In the January 11, 1995 rule, we proposed to revise 7 CFR 273.14(b)(3) to allow State agencies to interview by telephone any household that has no earned income and whose members are all elderly or disabled. We also proposed to give State agencies the option of conducting a face-to-face interview only once a year with a food stamp household that receives PA or GA. The interview could be conducted at the same time the household is scheduled for its PA or GA face-to-face interview. At any other recertification during that time period, the State agency may choose to interview the household by telephone. However, the State agency would be required to grant a face-to-face interview to any household that requests one.

We received nine comments on the proposed provision. One commenter thought that the definition of "stable households" in the proposed rule was unclear, and that the final rule should specify the households for which telephone interviews may be conducted.

The Department believes that the proposed regulatory language at 7 CFR 273.14(b)(3) clearly specified those categories of households for which the face-to-face interview could be waived. It may be waived for those households that have no earned income and in which all members are elderly or disabled, and it may be waived for food stamp households also receiving PA or GA. In the latter case, a household would have to receive at least one face-to-face interview a year.

Another commenter thought that the provision allowing State agencies to interview by telephone any household that has no earned income and whose members are all elderly or disabled is more restrictive than, and contradicts, the Food Stamp Act. Section 11(e)(2) of the Food Stamp Act, 7 U.S.C. 2020(e)(2), currently provides for the waiver of the face-to-face interview on a case-by-case basis for those households for whom a visit to the food stamp office would be a hardship. The commenter apparently thought that the Department was proposing to prohibit such waivers in

the future. That is not the Department's intent.

Current food stamp regulations at 7 CFR 273.2(e) provide for a waiver of the face-to-face interview requirement for hardship reasons. The Department did not propose in the January 11, 1995 rule to change that provision, and, in fact, proposed to include a reference to it in 7 CFR 273.14(b)(3). The commenter may have been confused by the discussion on Federal Register page 2709 of the proposed rule concerning a suggestion made previously by State agencies to allow case workers to determine on a case-by-case basis which households needed to be interviewed. The Department rejected the suggestion, believing that providing for the waiving of face-to-face interviews based on a caseworker's personal determination that a face-to-face interview is not necessary in a particular case could compromise the right to equal treatment guaranteed all food stamp recipients under section 11(c) of the Act, 7 U.S.C. 2020(c).

One commenter thought that the option to waive face-to-face interviews should be extended to households subject to monthly reporting and retrospective budgeting (MRRB). The commenter thought that since the circumstances of these households are updated monthly, a telephone interview should be sufficient to complete the household's recertification determinations.

Another commenter thought that the option to waive face-to-face interviews should also be extended to include group living arrangement residents even if they have earned income. The commenter explained that the resident is usually not able to complete the application process so it is completed by the authorized representative (AR) (usually the case manager) and all verifications are submitted by the AR. One case manager is responsible for numerous residents, and face-to-face interviews are very time consuming both for them and State staff. The commenter thought that since all the information is received through the AR for those households, a telephone interview of the AR should be sufficient.

The Department agrees that the changes suggested by the above two commenters have merit. However, the Department believes that such significant changes to current regulations should be proposed in order to give interested parties the opportunity to comment. Therefore, the Department is not adopting either suggestion at this time, but will consider both in future rulemakings.

Two commenters addressed the proposal to allow one face-to-face interview a year for joint food stamp/PA households. One commenter wrote to support the provision. The other suggested that the Department make food stamps and PA/GA requirements even more compatible by allowing mail-in recertifications when the household is not due for its face-to-face interview.

The Department agrees with the commenter that it is advantageous to both households and State agencies to have food stamp and PA requirements align as closely as possible. Therefore, the Department is revising 7 CFR 273.14(b)(3)(ii) to allow for mail-in recertifications at any recertification in an annual period in which the household does not receive a face-to-face interview for PA or GA. Telephone interviews should be conducted with the household if any of its reported circumstances are questionable.

The remaining three commenters objected to the proposed provision at 7 CFR 273.14(b)(3). That provision required the State agency to reschedule a missed interview if the interview had been scheduled before the household had submitted a recertification form. One of the commenters noted that under current regulations at 7 CFR 273.14(c)(2), it is the household's responsibility to reschedule a missed interview even if that interview was scheduled prior to the household filing a timely application.

The Department agrees with the commenters that the proposed provision added an additional recertification requirement, and is therefore making no change to current requirements at 7 CFR 273.14(c)(2).

3. Verification

Current regulations at 7 CFR 273.14(c)(3) give State agencies the option of establishing timeframes for submission of verification information. To increase consistency with procedures for initial applications and provide sufficient time for households to obtain the required verification information, the Department proposed in the January 11, 1995 rule to revise 7 CFR 273.14(b) to add a new paragraph (4) to require State agencies to allow households a minimum of 10 days in which to satisfy verification requirements.

One commenter noted that there is no provision for the situation in which the required 10-day period would extend beyond the end of the certification period. Current regulations at 7 CFR 273.14(d)(2) require that if a household's eligibility is not determined by the end of the current certification

period because of the time period allowed for submitting missing verification, and the household is subsequently found eligible, it must receive an opportunity to participate within 5 working days after submission of the required verification. The Department is revising the proposed regulations at 7 CFR 273.14(b)(4) to include this requirement.

The Department also proposed to simplify the requirements for verifying information at recertification. Current regulations at 7 CFR 273.2(f)(8)(i) require State agencies to verify at recertification a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25. State agencies are also required to verify previously unreported medical expenses and total recurring medical expenses which have changed by \$25 or more. Section 273.2(f)(8)(i) also prohibits State agencies from verifying income, 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." The Department proposed to amend 7 CFR 273.2(f)(8)(i)(A) and (C), and (ii) to replace the terms

"incomplete, inaccurate, inconsistent or outdated" with the term "questionable." One commenter was concerned that as a result of the change in wording, State agencies might interpret "questionable" to mean something other than incomplete, inaccurate, inconsistent, or outdated, and that they will not reverify information that falls in these categories.

To avoid any possibility that incomplete, inaccurate, inconsistent, or outdated information might not be reverified, the Department has decided not to make the proposed change.

4. Filing Deadline

Currently, 7 CFR 273.14(c)(1) provides that for monthly reporting households the deadline for filing an application for recertification is the normal date for filing a monthly report. Several State agencies have requested that, for the purpose of administrative efficiency and flexibility, the Department make the filing deadline for monthly reporters the 15th of the last month of the household's certification period (recertification month), the same as it is for nonmonthly reporting households. We proposed in the January 11, 1995 publication to revise 7 CFR 273.14(c) to give State agencies the option of making the filing deadline for monthly reporters either the 15th of the recertification month or the household's normal date for filing a monthly report.

The Department received no comments on the proposed provision and is adopting it as final.

5. Early Denial

Under current regulations at 7 CFR 273.14(a)(3), a State agency may deny a household's application for recertification at the time a household's certification period expires or within 30 days after the date the application was filed as long as the household has had adequate time to satisfy verification requirements. Under current regulations at 7 CFR 273.14(a)(2), a household that fails to attend a scheduled interview or to provide required verification information within required timeframes loses its right to uninterrupted benefits but cannot be denied eligibility at that time, unless the household fails to cooperate or the household's certification period has elapsed.

In the January 11, 1995 rule, the Department proposed a change in provisions for handling the recertification of households which do not comply with the requirements for interviews or verification. We proposed to include in revised section 7 CFR 273.14(e) a provision to allow State agencies the option of denying eligibility to households as soon as a failure to comply with the interview or verification requirement occurs. The State agency would be required to send the household a denial notice informing it that its application for recertification has been denied. The notice would have to contain the reason for the denial, the action required to continue participation, the date by which it must be accomplished, the consequences of failure to comply, notification that the household's participation will be reinstated if it complies within 30 days after its application for recertification was filed and is found eligible, and that the household has a right to a fair hearing. If the household subsequently requests an interview or provides the required verification information within 30 days of the date of its recertification application and is found eligible, the State agency must reinstate the household. Under this option, benefits must be provided within 30 days after the application for recertification was filed or within 10 days of the date the household provided the required verification information or completed the interview, whichever is later.

The Department received four comments on the proposed provision. Two commenters support the proposal, and the other two suggested that it apply at initial certification as well as at recertification.

The Department is not adopting the commenters' recommendation. The commenters' suggestion goes beyond the provision of the proposed rule. As noted earlier in this section, the Department believes that significant changes to current regulations should be proposed in order to provide an opportunity for public comment. Therefore, the Department is not accepting the commenter's suggestion at this time but will consider it for future rulemakings.

6. Proration of Benefits at Recertification

Current regulations at 273.14(f)(2) provide that any application for recertification not submitted in a timely manner shall be treated as an application for initial certification, except for verification requirements. If the household does not submit a recertification form before its certification period expires, the household's benefits for the first month of the new certification period are prorated in accordance with 7 CFR 273.10(a)(2). However, section 13916 of the 1993 Leland Act amended section 8(c)(2)(B) of the Act, 7 U.S.C. 2017(c)(2)(B), to eliminate proration of first month's benefits if a household is recertified for food stamps after a break in participation of less than one month. Therefore, if a household submits an application for recertification after its certification period has expired, but before the end of the month after expiration, the application is not considered an initial application and the household's benefits for that first month are not prorated. In the final rule, we proposed to include this new provision in revised section 7 CFR 273.14(e)(2)(ii). The Department received no comments on the proposed provision and is adopting it as final.

7. Expedited Service

Section 11(e)(9) of the Act, 7 U.S.C. 2020(e)(9), requires State agencies to provide coupons within 5 days after the date of application to destitute migrant or seasonal farmworkers; households with gross incomes less than \$150 a month and liquid resources that do not exceed \$100; homeless households; and households whose combined gross income and liquid resources are less than their monthly rent, mortgage and utilities.

In the January 11, 1995 rule, the Department proposed to eliminate expedited service at recertification. The Department proposed to create a new section, 7 CFR 273.14(f), which would clarify that households which punctually apply for recertification, or which apply late but within the

certification period, are not entitled to expedited service. However, households which do not apply for recertification until the month after their certification period ends are entitled to expedited service if they are otherwise eligible for such service. A conforming amendment to 7 CFR 273.2(i)(4)(iv) was also proposed.

The Department received eight comments on the proposed rule. Three commenters supported the proposed provision. Four commenters strongly opposed granting expedited service to households that reapply in the month immediately following the month of their last certification period. The commenters thought that households would use the provision to manipulate State agencies' issuance systems in order to receive benefits earlier than usual.

The Department believes there is no substantive evidence to support the commenters' claim that households will purposefully fail to submit timely applications for recertification in order to receive their first month's benefits earlier than they would under their normal issuance cycle. Anecdotal evidence received from State agencies which have applied for waivers of the expedited service requirement indicates rather that households prefer to receive their allotments for the first month of their new certification period in their normal issuance cycle. The Department, therefore, is making no change to the proposed provision and is adopting it as final.

The last commenter requested clarification on the interaction of the rules on expedited service, proration, and combined allotments. At initial application, a household eligible for expedited service must receive such service. If the household applies before the 15th of the month, it receives prorated benefits for the first month if eligible (assuming it timely satisfies all application requirements). If the household applies after the 15th of the month and is eligible for expedited service, it must receive a prorated allotment for the first month and a full allotment for the second month within the 5-day expedited service timeframe with postponed verification, if necessary, to meet the expedited timeframe.

At recertification, if the household timely reapplies for benefits and timely satisfies all application processing requirements, it is not eligible for expedited service, its benefit for the first month is not prorated, and it does not receive a combined allotment. If the household reapplies in the month after the end of its last certification period, it

must receive expedited service if eligible in accordance with the provisions of 7 CFR 273.14(f) finalized in this rule. In accordance with the new provisions at 7 CFR 273.14(e)(2)(ii), the household's benefits for the first month cannot be prorated if it satisfies all application processing requirements on a timely basis.

A household that reapplies after the 15th of the month in the month following the end of its last certification period, is not eligible for a combined allotment. Section 8(c)(3)(B) of the Act requires a combined allotment when a household that is entitled to expedited service applies after the 15th day of the month in lieu of its "initial" allotment and its regular allotment for the following month. Section 8(c)(2)(B) defines an initial month as one that follows any period of more than one month in which the household was not participating in the program. Since the month in which the household is reapplying is not an initial month, a combined allotment would not be required. The household, if eligible, would be entitled to a full month's allotment for the month in which it reapplies.

8. Miscellaneous Provisions

One commenter thought that the proposed requirement at 7 CFR 273.14(d)(2) that households be notified of their eligibility or ineligibility by the end of their current certification period places a hardship on State agency staff. The commenter thought that, in administering the rule, consideration must be given to weekends, holidays, and mail time which shortens the timeframe for making an eligibility determination. The commenter thought the regulation should be amended to require that the eligibility determination be made by the end of the current certification period.

The proposed provision represented no change from existing policy as currently contained at 7 CFR 273.14(d)(2) and 273.10(g)(1)(iii). The Department understands the difficulty State agencies may encounter when determining household eligibility. However, the Department believes households should be informed of their eligibility prior to the end of their certification period to ensure that they are aware of their eligibility or ineligibility prior to the date they expect to receive their next allotment. The Department is adopting the proposed provision as final.

The same commenter also suggested a change to the proposed regulations at 7 CFR 273.14(e)(1). Those regulations state that 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. The commenter thought that the phrase "immediate opportunity to participate" should be replaced with a definitive timeframe. The commenter felt that consideration must be given to different issuance systems and the need to mail benefits so that the phrase "immediate opportunity" has widely varying interpretations.

Because issuance systems vary between States, the Department is unsure of what timeframe would be appropriate. The Department does not wish to impose a timeframe that would be burdensome for many State agencies to meet, or a timeframe that is too broad and therefore further penalizes households who have not been given an opportunity to participate within their normal issuance cycle because of an error on the part of the State agency. For these reasons, the Department is not adopting the commenter's suggestion but is adopting the proposed provision as final. This will allow the State agency more flexibility to fit the requirement into its issuance system.

Retrospective Suspension—7 CFR 273.21(n)

Current regulations at 7 CFR 273.21(n) allow State agencies the option of suspending issuance of benefits to a household that becomes ineligible for one month. State agencies that do not choose suspension must terminate a household's certification when it becomes ineligible, and the household must reapply to reestablish its eligibility for the Program.

The need for suspension typically occurs when a household paid weekly (or biweekly) receives an extra check in a month with five (or three) paydays. Under current policy, State agencies which opt to suspend rather than terminate a household's participation must anticipate prospectively which month the household will be ineligible and suspend the household's participation for that month.

In the proposed rule, the Department proposed to amend 7 CFR 273.21(n) to grant State agencies the option of suspending households either retrospectively or prospectively. Under retrospective suspension, the State agency suspends the household for the issuance month corresponding to the budget month in which the household receives the extra check. This is the method used for suspension in the

AFDC program. The proposed rule required that the option to suspend and the method of suspension must be applied Statewide.

The Department received four comments on the proposed provision. Two were supportive of the provision, while two requested that the option of suspending issuance of benefits to a household that becomes ineligible for one month, which is currently limited to retrospectively budgeted households, be extended to prospectively budgeted households.

The Department agrees with the commenters that it is desirable to allow suspension for prospectively budgeted households, for it would eliminate the burden on both the household and State agency caused by the current requirement to reapply and complete the entire application process if eligibility is terminated for one month. Therefore, in addition to adopting the proposed amendment to 7 CFR 273.21(n) as final, we are also adding a provision to 7 CFR 273.12(c)(2) to allow State agencies to suspend prospectively budgeted households that become ineligible for one month for any reason.

Technical Amendments

In a final rule published June 9, 1994, titled "Technical Amendments to Various Provisions of Food Stamp Rules", the Department made several corrections to existing regulations. It has come to our attention that additional changes are needed. Therefore, we are making the following additional technical amendments:

1. Paragraphs (A) and (B) in 7 CFR 272.1(g)(74)(ii)(A) are redesignated as paragraphs (1) and (2).

2. The comma after the word "elderly" is being removed from 7 CFR 273.1(e)(1)(i).

3. 7 CFR 273.20(a) is being revised to complete the removal of references to Wisconsin, which formerly participated in the cash-out demonstration project and to revise the heading of the section.

4. In the fourth sentence of 7 CFR 278.1(h), the spelling of the word "applicant" is corrected.

5. A typographical error in the first sentence of 7 CFR 279.3(a) is corrected.

The Department is also taking this opportunity to amend 7 CFR 273.4(a) to remove paragraphs (9) and (11). These paragraphs were added to the regulations by a final rule published May 29, 1987 (52 FR 20058) to implement provisions of the Immigration Reform and Control Act (IRCA) of 1986.

Paragraph (9) provides that aliens granted lawful temporary resident status at least 5 years prior to applying for food

stamps and who subsequently gained lawful permanent resident status would be able to participate if otherwise eligible. The program to grant lawful temporary resident status to certain aliens has now ended and this paragraph is therefore obsolete. Aliens granted lawful temporary resident status under the provision have now either been granted lawful permanent resident status or are ineligible for benefits.

Paragraph (11) provides that an alien who is lawfully admitted for temporary residence as an additional special agricultural worker (Replenishment Agricultural Worker) as of October 1, 1989 through September 30, 1993, in accordance with section 210A(a) of the Immigration and Nationality Act, is not prohibited from participating in the Food Stamp Program. A final rule published by the Immigration and Naturalization Service (INS) at 59 FR 24031, May 10, 1994, amended the INS regulations to remove provisions pertaining to the RAW program because the program expired at the end of Fiscal Year 1993. The preamble to the regulation indicates that in the 3 years during which the program was in place, no immigration benefits were ever granted through the RAW program. Since the program has now expired, the provision is obsolete and is being removed from 7 CFR 273.4(a).

Conforming amendments are also being made to redesignate 7 CFR 273.4(a)(10) as 273.4(a)(9), to remove the reference to 7 CFR 273.4(a)(9) from 7 CFR 273.4(a)(2), and to change the reference in 7 CFR 273.2(f)(1)(ii)(A) and (D) from 7 CFR 273.4(a)(11) to 273.4(a)(9). These technical amendments are effective 30 days after publication.

Implementation

Except for the provisions of 7 CFR 273.14(b)(2), this final rule is effective November 18, 1996 and must be implemented no later than May 1, 1997. The provisions of 7 CFR 273.14(b)(2) allowing use of a modified recertification form must be approved by OMB under the Paperwork Reduction Act of 1995 before they can become effective. We will publish a notice in the Federal Register announcing the effective date when OMB approval is received. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current caseload shall be converted to these provisions following implementation at

the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date the State agency implemented the provision prior to the required implementation date. If for any reason a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a). For quality control purposes, any variances resulting from the implementation of the rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A).

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries—general line and wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line—wholesalers, Groceries, Groceries—retail.

Accordingly, 7 CFR Parts 272, 273, 278, and 279 are amended as follows:

1. The authority citation for Parts 272, 273, 278, and 279 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1:

a. Paragraph (g)(74) is amended by redesignating paragraphs (g)(74)(ii)(A)(A) and (B) as (g)(74)(ii)(A)(1) and (2).

b. a new paragraph (g)(147) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * *

(g) Implementation * * *

(147) *Amendment No. 364.* Except for the provisions of § 273.14(b)(2), the provisions of *Amendment No. 364* are effective November 18, 1996 and must be implemented no later than May 1, 1997. The effective date and implementation date of the provisions of § 273.14(b)(2) will be announced in a document in the Federal Register. The provisions must be implemented for all households that newly apply for Program benefits on or after either the required implementation date or the date the State agency implements the provision prior to the required implementation date. The current caseload shall be converted to these provisions following implementation at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to required implementation date or the date the State agency implemented the provision prior to the required implementation date. If for any reason a State agency fails to implement by the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later, but for no more than 12 months in accordance with § 273.17(a) of this chapter. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter and 7 U.S.C. 2025(c)(3)(A).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**§ 273.1 [Amended]**

3. In § 273.1, paragraph (e)(1)(i) is amended by removing the comma after the word "elderly".

4. In § 273.2:

a. A new paragraph (c)(2)(iii) is added.

b. Paragraph (f)(1)(ii)(A) is amended by removing the reference "(a)(11)" and adding the reference "(a)(9)" in its place.

c. Paragraph (f)(1)(ii)(D) is amended by removing the reference "§ 273.4(a)(8) through (11)" and adding in its place the reference "§ 273.4(a)(8) and (a)(9)".

d. A new sentence is added to the end of paragraph (f)(1)(v).

e. Paragraph (g)(2) is redesignated as paragraph (g)(3) and a new paragraph (g)(2) is added.

f. The third and fourth sentences of the undesignated paragraph following paragraph (i)(4)(i)(B) are amended by removing the word "first" wherever it appears in both sentences and adding in its place the word "second".

g. The fourth sentence of the undesignated paragraph following paragraph (i)(4)(i)(B) is further amended by adding the words ", 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)" before the period.

h. The third sentence of paragraph (i)(4)(iii) introductory text is amended by adding the words "and is certified for the month of application and the subsequent month only" before the words "to submit a second application".

i. Paragraphs (i)(4)(iii)(A), (i)(4)(iii)(B), and (i)(4)(iii)(C) are revised.

j. New paragraphs (i)(4)(iii)(D) and (i)(4)(iii)(E) are added.

k. A new sentence is added at the end of paragraph (i)(4)(iv).

The additions and revisions read as follows:

§ 273.2. Application processing.

* * * *

(c) Filing an application. * * ***(2) Contacting the food stamp office.**

* * *

(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.

* * * *

(f) Verification. * * ***(1) Mandatory verification. * * ***

(v) *Social security numbers.* * * * A completed SSA Form 2853 shall be considered proof of application for an SSN for a newborn infant.

* * * *

(g) Normal processing standard.

* * *

(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.

* * * *

(i) Expedited service. * * ***(4) Special procedures for expediting service. * * ***

(iii) * * *

(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) * * * The provisions of this section shall not apply at recertification if a household reapplies before the end of its current certification period.

* * * * *

5. In § 273.3:

a. The existing undesignated paragraph is designated as paragraph (a), and is further amended by removing the first sentence and adding two sentences in its place.

b. Paragraph (b) is added.

The additions read as follows:

§ 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. * * *

(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.

§ 273.4 [Amended]

6. In § 273.4:

a. paragraph (a)(2) is amended by removing the words "paragraphs (a)(8) or (a)(9)" and adding in their place the words "paragraph (a)(8)".

b. paragraphs (a)(9) and (a)(11) are removed and paragraph (a)(10) is redesignated as paragraph (a)(9).

7. In § 273.6, a new paragraph (b)(4) is added to read as follows:

§ 273.6 Social security numbers.

* * * * *

(b) *Obtaining SSNs for food stamp household members.* * * *

(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.

* * * * *

8. In § 273.8, the first sentence of paragraph (e)(2) is revised to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

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

(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.

* * *

* * * * *

9. In 273.10:

a. The second sentence of paragraph (a)(1)(iv) is amended by adding the words "second full" after the words "benefits for the".

b. Paragraph (a)(1)(iv) is further amended by removing the third and fourth sentences.

c. Paragraph (c)(2)(iii) is revised.

d. A new sentence is added at the end of paragraph (c)(3)(ii).

e. Paragraph (f)(3) is revised.

f. The first sentence of paragraph (g)(2) is amended by adding the words "if the household has complied with all recertification requirements" after "current certification period".

The additions and revision read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(c) *Determining income.* * * *

(2) *Income only in month received.*

* * *

(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.* * * *

(ii) * * * 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.

* * * * *

(f) *Certification periods.* * * *

(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.

* * * * *

10. In § 273.11:

a. The heading of paragraph (b) and the heading of the introductory text of paragraph (b)(1) are revised;

b. The introductory text of paragraph (b)(1)(ii) is revised;

c. Paragraph (b)(1)(ii)(B) is amended by removing the period at the end of the paragraph and adding in its place a semicolon and the word "or".

d. A new paragraph (b)(1)(ii)(C) is added;

e. A new paragraph (b)(2) is added.

The revisions and additions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(b) *Households with income from boarders and day care.*

(1) *Households with boarders.* * * *

(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:

* * * * *

(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.

* * * * *

(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.

* * * * *

11. In § 273.12, the text of paragraph (c)(2) is redesignated as (c)(2)(i) and a new paragraph (c)(2)(ii) is added to read as follows:

§ 273.12 Reporting changes.

* * * * *

(c) *State agency action on changes.*

* * *

(2) *Decreases in benefits.* * * *

(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.

* * * * *

12. In § 273.13, a new paragraph (c) is added to read as follows:

§ 273.13 Notice of adverse action.

* * * * *

(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.

13. § 273.14 is revised to read as follows:

§ 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.

14. In § 273.20, the section heading and paragraph (a) are revised to read as follows:

§ 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.

15. In § 273.21, paragraph (n)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB)

(n) *Suspension.* * * *

(1) * * * 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.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

16. In § 278.1, the fourth sentence of paragraph (h) is amended by removing the word "appliant" and adding the word "applicant" in its place.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

§ 279.3 [Amended]

17. In § 279.3, the introductory text of paragraph (a) is amended by removing the word "A" and adding the word "An" in its place.

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

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