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Food Stamp Program; Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AC39

Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule finalizes the proposed rule of the same name which was published December 17, 1999. It implements 13 provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Upon implementation, this rule will: Prohibit an increase in food stamp benefits when a household's income is reduced because of either a penalty imposed under a Federal, State, or local means-tested public assistance program for failure to perform a required action or for an act of fraud; allow State agencies to disqualify an individual from participation in the Food Stamp Program (Program) if the individual is disqualified from another means-tested program for failure to perform an action required by that program; specify that State agencies may not apply a food stamp sanction to Program households for failure to ensure their minor children attend school, or if the adults do not have (or are not working toward attaining) a secondary school diploma or its equivalent; make individuals convicted of drug-related felonies ineligible for food stamps; make fleeing felons and probation and parole violators ineligible for food stamps; require States to provide households' addresses, Social Security Numbers, or photographs to law enforcement officers to assist them in locating fugitive felons or probation or parole violators; allow States to require food stamp recipients to cooperate with child support agencies as a condition of food stamp eligibility; allow states to disqualify individuals who are in arrears in court-ordered child support payments; double the penalties for violating Program requirements; permanently disqualify individuals convicted of trafficking in food stamp benefits of $500 or more; make individuals ineligible for 10 years if they misrepresent their identity or residence in order to receive multiple Program benefits; and limit the Program participation of most able-bodied adults without dependents to three months in a three-year period during times the individual is not working or participating in a work program.

DATES: *Effective Dates:* This rule is effective no later than April 2, 2001, except for the amendment to 7 CFR 272.2(d)(1)(xiii) which is effective August 1, 2001.

Implementation Date: State agencies must implement the provision in this final rule no later than August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, (703) 305–2516. Her Internet address is: Margaret.Batko@FNS.USDA.GOV.

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

SUPPLEMENTARY INFORMATION:

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. FNS has considered the impact on State agencies. For the most part, this rule deals with changes required by law, and implemented by law in 1996. However, the Department has made discretionary changes to ensure client protections and access to the Program and to simply the administration of the requirements by the State agencies. These changes primarily affect food stamp recipients. The effects on State agencies are moderate. In some instances, the changes result in modest increases in administrative burdens. However, these changes are legislatively mandated and we have no discretion to minimize them. This rule is intended to have preemptive effect on any State law that conflicts with its provisions or that would otherwise impede its full implementation. Generally, PRWORA and other federal statutes required many of the changes made in this rule, and made most of them effective on enactment and all of them effective prior to the publication of this rule. FNS is not aware of any case where the discretionary provisions of the rule would preempt State law.

Prior Consultation With State Officials

Before drafting this rule, we received input from State agencies at various times. Because the Program is a State-administered, federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis. These discussions involve implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other Program rules. In addition, FNS officials attend regional, national, and professional conferences to discuss issues and receive feedback from State officials at all levels. Lastly, the comments on the proposed rule from State officials were carefully considered in drafting this final rule. The nature of the concerns of the State and local officials who commented on the proposed rule, our position supporting the need to issue this final rule, and the extent to which the concerns expressed by the State and local officials have been met are discussed in detail in this preamble.

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 part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final 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 **DATES** 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.

Regulatory Flexibility Act

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

Paperwork Reduction Act

The information collection burden associated with the provisions in this rule concerning eligibility, certification, and continued eligibility of food stamp recipients is approved under OMB 0584–0064. The information collection burden associated with the request for a waiver under the food stamp time limit in 7 CFR 273.24 is approved under OMB No. 0584–0479. The information collection burden associated with provisions in this rule which affect the regulations at 7 CFR 273.16, the Demand Letter for Over Issuance, is approved under OMB 0584–0492. The information collection burden that is associated with the provisions in this rule which affect the regulations at 7 CFR 272.2, the State Plan of Operations, is approved under OMB 0584–0083.

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes required to be implemented by law have been implemented.

All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15.'' Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Regulatory Impact Analysis

Need for Action: On August 22, 1996 the President signed the PRWORA. This rule implements 13 provisions of the PRWORA. This rule (1) prohibits an increase in food stamp benefits when households' income is reduced because of a penalty imposed under a Federal, State, or local means-tested public assistance program for failure to perform a required action, (2) prohibits an increase in food stamp benefits when households' income is reduced because of an act of fraud under a Federal, State, or local means-tested public assistance program; (3) allows States to disqualify an individual from the Program if the individual is disqualified from another means-tested program for failure to perform an action required by that program; (4) clarifies that households who are receiving grants under a State's Temporary Assistance for Needy Families (TANF) Program and who are sanctioned because their minor children are not attending school, or if the adults do not have (or are not working toward attaining) a secondary school diploma or its equivalent, may not be sanctioned under the Program beyond those sanctions provided for in 7 CFR 273.11(k) and (l); (5) makes individuals convicted of drug-related felonies ineligible for food stamps; (6) makes fleeing felons and probation and parole violators ineligible for food stamps; (7) requires States to provide households' addresses, Social Security numbers, or photographs to law enforcement officers to assist them in locating fugitive felons or probation or parole violators; (8) allows states to require food stamp recipients to cooperate with child support agencies as a condition of food stamp eligibility; (9) allows states to disqualify individuals who are in arrears in court-ordered child support payments; (10) doubles the penalties for violating Program requirements; (11) permanently disqualifies individuals convicted of trafficking in food stamp benefits of $500 or more; (12) makes individuals ineligible for 10 years if they misrepresent their identity or residence in order to receive multiple food stamp benefits; and (13) limits the food stamp participation of most able-bodied adults without dependents (ABAWDs) to three months in a three-year period during times the individual is not working at least half-time or participating in a work program.

The changes in food stamp requirements made by the provisions in PRWORA addressed in this rule would reduce Program costs for fiscal year (FY) 1999–2003 by approximately $1.810 billion. For FY 1999–2003, the estimated yearly savings are (in millions) $525, $431, $348, $263, and $243, respectively. The majority of the savings are realized from Section 824 of PRWORA, time limited benefits for able-bodied adults without dependents. Smaller savings are realized from the following provisions: Section 819, comparable disqualifications; Section 822, cooperation with child support agencies; Section 823, disqualifications for child support arrears; and Section 829 and 911, no increase in benefits. The savings from the remaining provisions in the rule are negligible and, therefore, will not be discussed in this analysis.

Comparable Disqualifications—Section 819—This provision gives States the option to impose the same disqualification for food stamps as imposed on a household member for failure to take a required action under a Federal, State, or local law relating to a means-tested public assistance program. The rule provides that: (1) The

program has to be authorized by Federal, State, or local law; (2) that a Federal means-tested program includes public and general assistance as defined in 7 CFR 271.2; (3) the provision may be applied selectively to programs since it is an optional provision; (4) the provision only applies if the person is disqualified while receiving the other assistance and food stamps; (5) the provision does not apply to time-limited benefits, exceeding the family cap, failing to complete the application process on time or failing to reapply; or to purely procedural requirements such as submitting a form; (6) only a household member may be disqualified; (7) the penalty must run concurrently with the penalty in the other program, and for the duration of the penalty in the other program, but not to exceed one year without review; (8) A State must shorten the disqualification period when it becomes aware that the person is ineligible for means-tested public assistance for another reason during that time frame; (9) all of the resources and all but pro rata share of the income of the ineligible member must be counted in accordance with 7 CFR 273.11(c)(2); (10) the household rather than the State agency will have to initiate the action of adding a person back to the household; (11) a disqualification may be imposed in addition to allotment reductions under section 829 of PRWORA; and (12) States that elect to implement this provision must include it in the Plan of Operation.

This provision affects participants to the extent States choose to implement this provision and to the extent individuals are disqualified or sanctioned under another Federal means-tested program. We estimate that 3,000 participants will be disqualified from food stamp benefits due to this provision in FY 1999. We estimate that the FY 1999 cost savings from this provision will be $5 million and the five-year cost savings for FY 1999 through FY 2003 will be $25 million.

As a proxy for the number of individuals disqualified from other means-tested programs, we used Department of Health and Human Services' Administration for Children and Families data regarding the average number of people sanctioned monthly from the JOBS program in May 1994. More recent data were not available. There were almost 13,000 monthly first sanctions, 1,876 monthly second sanctions and 375 monthly third sanctions. First sanctions were assumed to result in instant compliance and therefore last zero months in duration. Second sanctions were assumed to have an average duration of three months and third sanctions were assumed to have an average duration of six months.

The savings estimate was calculated as the sum of the products of the number of individuals sanctioned, an estimated average food stamp benefit per person ($73.74) and the duration of the sanction [*e.g.* (12,999 cases of first sanctions) times ($73.74 times 12 months for yearly benefits) times 0 months of sanction; (1,876 cases of second sanctions) times ($73.74 times 12 months for yearly benefits) times 3 months of sanction; (375 cases of third sanctions) times ($73.74 times 12 months for yearly benefits) times 6 months of sanction)].

Because Section 819 is optional, the estimate was adjusted to account for the proportion of food stamp households in States choosing to exercise this provision. State option data were based on the May 1998 FNS report, State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50-State Survey, indicating which States have adopted the optional provisions of PRWORA as of the end of calendar year 1997. Thirteen States reported having adopted this optional provision: Arizona, California, Idaho, Illinois, Kansas, Maine, Michigan, Mississippi, North Dakota, Ohio, South Dakota, Tennessee and Wyoming. According to 1998 food stamp quality control data, these thirteen States account for approximately 30 percent of all food stamp public assistance households. The savings estimate was, therefore, adjusted to reflect 30 percent uptake by States. The estimate of the number of individuals disqualified because of the section 819 provision equals the total unrounded savings divided by an estimated average food stamp benefit.

Cooperation with Child Support Agencies—Section 822 of PRWORA—This provision allows States to require cooperation with child support agencies as a condition of food stamp eligibility. The provision is optional and can be waived for the custodial parent for good cause but not for the non-custodial parent. The rule requires: (1) States to refer appropriate individuals to the agency funded under IV–D for a determination of cooperation; (2) State agencies to adopt the IV–A or IV–D agency's standards for good cause, (3) the disqualification is for the individual and not the entire household; (4) States that elect to implement this provision to include it in the Plan of Operation; and (5) States to count all of the resources and all but pro-rata share of the income of the disqualified individual.

This provision affects participants to the extent States choose to implement this provision and to the extent they are a custodial or non-custodial parent with child support responsibilities and do not cooperate with child support agencies.

Custodial Parents

Using the fiscal year 2001 budget baseline, we estimate that in FY 1999 approximately 4,000 custodial parents will be disqualified due to sanctions for noncompliance and 68,000 custodial parents will have their benefits slightly reduced due to compliance and increased child support income as a result of this provision. We estimate the FY 1999 cost savings for the custodial parents to be $15 million and the five-year cost savings for FY 1999 through FY 2003 to be $85 million.

Because food stamp households receiving public assistance are already mandated to cooperate with child support agencies, the impact of this provision is expected to be realized among food stamp-only custodial-parent households. Based on the February 1995 FNS report, Participation in the Child Support Enforcement Program Among Non-AFDC Food Stamp Households, food stamp-only custodial households with child support needs that are not cooperating with the child support agencies account for roughly 2.8 percent of all participating food stamp households. According to the report, the response of these custodial parents to this provision was assumed to fall into three categories: (1) Those that comply and receive higher child support payments; (2) those that do not comply and face sanctions, and; (3) those that opt to leave the Program rather than comply.

First, in the 1995 report, custodial parents choosing to comply with the provision were found to account for approximately 8.5 percent of food stamp benefits and were expected to experience a decline in food stamp benefits of 2.0 percent as a result of higher child support payments. Savings from this group was calculated as the proportion of total food stamp benefits contributed to this group (8.5 percent) times the expected decline of 2.0 percent (0.085 times 0.02 = .00170 or 0.17 percent).

Second, to estimate the cost for households which are sanctioned for noncompliance, the report indicated that food stamp-only custodial households accounted for 7.0 percent of all food stamp households, and that approximately 2.1 percent of such households would choose to be sanctioned rather than comply with the provision. The total number of participating households was calculated by dividing a participation projection

from the fiscal year 2001 budget baseline by the average household size from 1998 food stamp quality control data (2.4 persons). The monthly benefit reduction for those sanctioned and leaving food stamps rather than comply was estimated to be the difference between the maximum allotment for a family of four and the maximum allotment for a family of three (difference =$90). The savings for this group was calculated as the product of total households, the proportion which are food stamp-only custodial households (7.0 percent), the proportion choosing to be sanctioned rather than comply with the provision (2.1 percent), and the annual value of the sanction (e.g., in FY 1999, 7,276 households times 7 percent times 2.1 percent times $90 times 12 months).

Third, the 1995 report indicated that of food stamp-only custodial households, 3.8 percent were expected to leave the Program rather than comply with the provision. The estimate of savings from the group of custodial parents choosing to leave food stamps rather than comply was calculated as the product of the number of total food stamp households, the proportion which are food stamp-only custodial households (7.0 percent), the proportion choosing to leave food stamps rather than comply (3.8 percent), and the annual value of the household benefit lost (*e.g.,* in FY 1999, 7,276 households times 7 percent times 3.8 percent times $221 benefit per month times 12 months).

The three group impacts were summed and the estimate was adjusted pursuant to assumptions regarding the proportion of food stamp recipients in States choosing to adopt this optional provision—10 percent in FY 1997 and growing to 20 percent by FY 2003. State option data were based on the May 1998 FNS report, *State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50-State Survey.* Seven States reported having adopted this optional provision as of the end of calendar year 1997: Idaho, Kansas, Maine, Michigan, Mississippi, Ohio and Wisconsin. According to 1998 food stamp quality control data, these seven States account for approximately 10 percent of applicable food stamp households.

The estimate of the number of custodial parents disqualified for food stamp benefits from this provision (4,000 people) was calculated as the total unrounded savings ($10.6 million) attributable to the second and third groups of custodial parents—those continuing to not cooperate with child support agencies—divided by the annual value of their sanction ($221 times 12 months).

The estimate of the number of custodial parents receiving reduced benefits as a result of complying with this provision and receiving increased child support income (68,000 persons) was calculated as the difference between the total number of custodial parents affected by the provision (71,000 persons) and those being disqualified for noncompliance (4,000 people) rounded to the nearest thousand. The total number of custodial parents affected was estimated as the total target population of the provision—2.8 percent of all households according to the 1995 report—times the projected number of participants from the FY 2001 budget baseline, times the State option phase-in assumptions.

Non-Custodial Parents

Using the fiscal year 2001 budget baseline, we estimate that approximately 4,000 non-custodial parents will be disqualified by this provision in FY 1999. We estimate the FY 1999 cost savings for non-custodial parents to be $5 million and the five-year cost savings for FY 1999 through FY 2003 to be $25 million.

Estimates of the savings attributable to the non-custodial parents in this provision are based on information from a 1995 report, *Non-custodial Fathers: Can They Afford to Pay More Child Support,* by Elaine Sorenson at the Urban Institute. Data on non-custodial parents is extremely limited and this was the best available information. The number of non-custodial parents not cooperating with child support was estimated to be more than 78,000 in 1990. This estimate was based on the reported 5.9 million fathers in 1990 who were not paying support, adjusted by 75 percent to account for those at low-income levels, times the proportion estimated to represent non-custodial fathers receiving food stamps who had no child support order—a proxy for non-cooperation (1.77 percent which is derived from the 1995 Urban Institute report) (5.9 million times 0.75 times 0.0177 = 78,323). The estimate of the number of non-custodial parents not cooperating with their child support agency was inflated by 1.5 percent annually to account for growth in the child support system. This inflation factor is consistent with information from the Department of Health and Human Services on the child support system. The savings were estimated as the product of the number of non-custodial parents not cooperating and an estimated average food stamp benefit per person ($72.29 per month times 88,891 persons times 12 months).

The savings estimate for non-custodial parents was adjusted for the proportion of households in States choosing to adopt this optional provision and assumptions regarding the percent of non-cooperating non-custodial parents States are able to identify and sanction. The State option assumptions were based on the May 1998 FNS report, State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50-State Survey. Three States reported having adopted this provision at the end of calendar year 1997: Maine, Mississippi, and Wisconsin. According to 1998 quality control data, these three States account for roughly 5 percent of all applicable households. Therefore, the savings estimate in FY 1997 assumes only these States implement this child support provision, thereby affecting 5 percent of all households that could be subject to this provision, and further assumes a gradual expansion of the States selecting this option so that 10 percent of all households are subject to this provision by FY 2003. The estimate was adjusted further based on the assumption that, operating at maximum effectiveness, States would only be able to correctly identify and sanction 75 percent of applicable offenders.

The estimate of the number of non-custodial parents disqualified for food stamp benefits from this provision was calculated as the total unrounded savings from non-custodial parents ($3 million) divided by an estimated average annual food stamp benefit ($867.48 = $72.29 times 12 months).

Summing together the estimates for both custodial and non-custodial parents, we estimate that 8,000 people will be disqualified as a result of these provisions in FY 1999. 68,000 custodial parents will have benefits reduced due to higher amounts of child support income as a result of this provision. We estimate the FY 1999 cost savings to be $20 million and the five-year cost savings for FY 1999 through FY 2003 to be $110 million.

Disqualification for Child Support Arrears—Section 823—This provision allows States to disqualify individuals for any month during which they are delinquent in any court-ordered child support payment. This provision is optional. The rule requires that: (1) The disqualification apply to the individual and not the entire household; (2) if the State later discovers that an individual was delinquent in paying child support, the State shall determine disqualification and establish a claim for the month's benefits; (3) States that

elect to implement this provision must include it in the Plan of Operation; and, (4) the States must count all of the resources and all but a pro rata share of the income of disqualified individuals.

This provision affects participants to the extent States choose to implement this provision and to the extent they have court-ordered child support responsibilities and they are delinquent in their payments. We estimate that approximately 3,000 persons will be disqualified as a result of this provision in FY 1999. We estimate the FY 1999 cost savings to be $5 million and the five-year cost savings for FY 1999 through FY 2003 to be $25 million.

The estimate of savings for this provision was based on the 1995 report, Non-Custodial Fathers: Can They Afford to Pay More Child Support, by Elaine Sorenson at the Urban Institute. There were an estimated 825,000 custodial mothers participating in the child support system (in IV–D programs) with child support orders not receiving support in 1990. It was assumed that for every custodial mother with an order and without support, there was a non-custodial father in arrears. Estimating that almost 7 percent (the national average of 1 in 14 Americans receiving food stamps) of them were receiving food stamp benefits, it was calculated that in 1990 there were more than 56,000 non-custodial fathers receiving food stamps who were in arrears for court-ordered child support. This number was inflated by 1.5 percent per year to reflect growth in the child support system, consistent with information from the Department of Health and Human Services. The estimate of savings for this provision was based on an estimated average monthly benefit per person ($72.29). The total savings was calculated as the product of the number of non-custodial fathers in arrears for child support times the annual benefits they would lose due to disqualification (64,883 people times $72.29 per month times 12 months).

This product was adjusted for assumptions regarding the proportion of food stamp households in States choosing to implement this provision and the State's ability to identify and sanction the appropriate individuals. The State option assumptions were based on the May 1998 FNS report, State Food Stamp Choices Under Welfare Reform: Findings of 1997 50-State Survey, indicating that three States reported operating this provision at the end of 1997: Ohio, Oklahoma and Wisconsin. According to 1998 food stamp quality control data, these three States account for approximately 5 percent of all applicable households. The savings estimate was adjusted to reflect that 5 percent of the States would implement this provision in FY 1997, growing to 10 percent by FY 2003. The estimate was adjusted further based on the assumption that, operating at maximum effectiveness, States would only be able to correctly identify and sanction 75 percent of applicable offenders. In FY 1999, for example, the savings was calculated by taking the product of the 6 percent State phase-in and the assumption of 75 percent cooperation and multiplying it by the total savings. The estimate of the number of individuals disqualified for food stamp benefits from this provision was calculated as the total unrounded savings ($2.5 million) divided by an estimated average annual food stamp benefit ($867.48).

Able-Bodied Adults without Dependents—Section 824 of PRWORA—This provision limits the receipt of food stamps for certain able-bodied adults without dependents (ABAWDs) to 3-months in a 36 month period unless the individual is either working at least half-time or participating in an approved work or work training program for at least 20 hours per week. Individuals are exempt from the time limit if they are under 18 or 50 years or older, medically certified as physically or mentally unfit for employment, a parent or other household member with responsibility for a dependent child, or exempt from work registration under 6(d)(2) of the Act, or pregnant. Individuals can regain eligibility if they work 80 hours in a 30 day period, and they maintain eligibility as long as they are satisfying the work requirement. If individuals later lose their job, they can receive an additional 3 months of food stamps while not working. The additional 3 months must be consecutive, and begins on the date the individual notifies the State that he/she is no longer working. The Act allows waivers of the time limit for groups of individuals living in areas with an unemployment rate of more than 10 percent or where there are not a ''sufficient number of jobs to provide employment for the individuals.''

The rule: (1) Allows unpaid and work for in-kind services to count as ''work;'' (2) allows the State agency to determine good cause for missing work; (3) does not count partial months toward the 3 month limit; (4) makes verification of work hours mandatory; (5) makes participants report changes in work hours that bring the person below 20 hours a week; (6) counts all of the resources and all but a pro rata share of the income of the ineligible ABAWD as available to the household; (7) exempts individuals starting on their 50th birthday; (8) exempts all adults in a household where there is a child under 18; (9) prorates benefits back to the date the ''cure'' is complete for regaining eligibility (except in instances where individuals regain eligibility by doing workfare, at which point the benefits will be prorated back to the date of application); (10) requires States to submit unemployment data based on approved Bureau of Labor Statistics methodologies when applying for a waiver under the 10 percent criteria; (11) approves a waiver for a time period that bears some relationship to the documentation provided, but for no more than a year.

This provision affects participants to the extent they are able-bodied adults without dependents and to the extent they are not fulfilling the work requirement, exempt or covered by a waiver. The methodology used in this provision relies on current projections of participation in the Program and information on food stamp participants prior to PRWORA who match the ABAWD definition. We estimate that 345,000 individuals are subject to the time limit in FY 1999 due to this provision. We estimate that the FY 1999 cost savings from this provision will be $490 million. We estimate that the five-year cost savings for FY 1999 through FY 2003 will be $1.6 billion.

The caseload estimates were generated by identifying program participants in the 1996 food stamp quality control data who are likely to lose eligibility due to ABAWD work requirement provisions (those between the ages of 18 and 50 who have no dependents, are not disabled, who do not already have more earnings than that of a 20 hour-per week job, etc.). The size of this group of participants was then adjusted to reflect the decline in overall caseload between 1996 and 1999, resulting in a pool of just under 730,000 program participants who could have been considered to be subject to the ABAWD provisions in FY 1999. An adjustment was then made to account for the estimated number of ABAWDS who lived in waived areas and were exempt from the work requirement, which narrowed this pool down to approximately 523,000. An additional adjustment of just under 180,000 participants was then taken to account for persons who were able to retain eligibility through the Food Stamp Employment and Training (E&T) program. The estimated 345,000 participants who remain represent the final pool of ABAWDS in FY 99 who are expected to lose their eligibility due to the new work requirement. The cost

estimates for 1999 was then derived by first multiplying the 345,000 participants by the average monthly benefit for a single able-bodied Food Stamp recipient ($118), and then multiplying that amount by 12 to get the annual cost. Cost estimates for FY 2000–2003 also incorporated the expected decline in food stamp participation as well as the increased use of E&T funds to provide qualifying work opportunities.

Subsequent to the enactment of PRWORA, the Balanced Budget Act of 1997 and the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) modified the ABAWD provisions of PRWORA. The Balanced Budget Act of 1997 increased funding to the Food Stamp Employment and Training Program to allow states to create qualifying work opportunities to help ABAWDs retain their Food Stamp eligibility, and permitted states to exempt up to 15 percent of their unwaived able-bodied caseload from the time limits. AREERA further modified the level of funding for Employment and Training Programs for ABAWDs. Taken together both of these laws will likely mitigate the effects of the ABAWD provisions of PRWORA. The effects of these more recent laws will be addressed in future rulemaking.

No increase for Penalties in other Programs—Section 829 and 911—Section 829 provides that if a household's benefits are reduced under a Federal, State, or local means-tested public assistance program for failure to perform a required action, the household may not receive an increased food stamp allotment as a result of the decrease in income due to the reduced public assistance payment. This applies to both intentional and unintentional failures to take a required action. In addition to not increasing allotments, States may reduce the Food Stamp allotment by up to 25 percent. The rule requires that: (1) Federal means-tested public assistance programs include public and general assistance as defined in 7 CFR 271.2; (2) ''reduced'' means denied, decreased, suspended, or terminated; (3) the penalty must be applied while the person is receiving other assistance; (4) it only applies if the other agency cooperates and it applies to overlapping provisions but runs concurrently; (5) States can prohibit an increase by several different means and reduce the allotment by up to 25 percent; (6) the whole household cannot be denied and the reduction cannot be more than 25 percent even if Title IV–A has a larger reduction; (7) States that elect to implement this 25 percent reduction must include it in the Plan of Operation; (8) the penalty will be for the same duration as the assistance penalty (but the State agency must review for appropriateness if the penalty is in effect after one year) and States must end the prohibition when it becomes aware that the person is ineligible for assistance in the other program for some other reason; and that the sanction goes with the person when they move within the State.

Section 911 prohibits an increase in food stamp benefits as the result of a decrease in Federal, State, or local means-tested assistance benefits because of fraud. The rule provides that this provision be treated the same as 829.

Participants will be affected by these provisions to the extent their benefits are reduced for failure to perform a required action or for fraud. The effect of the provisions also depends on the cooperation of other programs in notifying the food stamp agency. We estimate approximately 6,000 participants will be affected by these provisions. We estimate the FY 1999 cost saving to be $5 million and the five-year cost savings for FY 1999 through FY 2003 to be $40 million.

Food stamp savings from these provisions results from two sources: (1) A mandatory prohibition on increasing food stamp benefits when individuals receive lower benefits in other means-tested programs for failure to comply with a required action; and (2) an optional provision to decrease food stamp benefits by no more than 25 percent.

The estimate for savings from the mandatory prohibition on increasing benefits was based on the Department of Health and Human Services' Administration for Children and Families data regarding the average number of people sanctioned monthly from the JOBS program in May 1994. This serves as a proxy for the number of individuals that receive reduced benefits from a means-tested programs for failure to perform a required action or for fraud, and is the best available data. (Data on fraud in other programs is unavailable.) There were almost 13,000 monthly first sanctions, 1,876 monthly second sanctions and 375 monthly third sanctions. First sanctions were assumed to result in instant compliance and therefore last zero months in duration. This assumption is based on 1994 information from the Department of Health and Human Service, Administration on Children and Families (ACF). ACF does not have any more recent information. Second sanctions were assumed to have an average duration of three months and third sanctions were assumed to have an average duration of six months. The savings from the mandatory prohibition on increasing food stamp benefits was calculated as the sum of the products of the number of individuals sanctioned, the average AFDC benefit lost times the FSP benefit reduction rate of 30 percent, and the duration of the sanction. The average AFDC benefit reduction was taken from the average AFDC benefit per person reported in the 1996 Green Book and inflated over time. ((1,876 monthly second sanctions times 12 months times the 1999 estimated average AFDC benefit lost which equals $143 times 30 percent FSP benefit reduction times 3 months) plus (375 monthly third sanctions times 12 months times the average AFDC benefit lost which equals $143 times 30 percent FSP benefit reduction times 6 months))

The estimate for savings from the State option to decrease food stamp benefits by no more than 25 percent was based on an estimated average monthly food stamp benefit per person and the JOBS sanction data. The savings was calculated as the product of the number of individuals sanctioned, 25 percent of the average food stamp benefit per person and the duration of the sanction. This estimate was adjusted to account for the proportion of food stamp households in States expected to exercise this optional provision—10 percent in 1997 and growing to 20 percent by 2003. This was based on information provided in the May 1998 FNS report, *State Food Stamp Policy Choices Under Welfare Reform: Findings of 1997 50-State Survey.* Seven States reported having adopted this optional provision at the end of 1997: Connecticut, Iowa, Kentucky, Michigan, Mississippi, Montana and Tennessee. According to 1998 food stamp quality control data, these seven States account for approximately 10 percent of all food stamp cash assistance households.

The savings estimates for the mandatory and optional portions of the provisions were summed. The estimate of the number of individuals receiving a reduction in food stamp benefits due to these provisions was calculated as the total unrounded savings divided by an estimated average annual food stamp benefit. ((1,876 monthly second sanctions times 12 months times the average AFDC benefit lost which equals $143 times 30 percent Program benefit reduction times 3 months) plus (375 monthly third sanctions times 12 months times the average AFDC benefit lost which equals $143 times 30 percent Program benefit reduction times 6 months) plus the sum of (1,876 times 12 months times the average FSP benefit per AFDC household which equals

$259.96 times .25 reduction times 3 months) and (375 times the average Program benefit per AFDC household which equals $259.96 times .25 reduction times 6 months))

Background

On August 22, 1996, the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA). The PRWORA amended the Act by adding new Program eligibility requirements, increasing existing penalties for failure to comply with Program rules, and establishing a time limit for Program participation of three months in three years for able-bodied adults without children who are not working at least half time.

On December 17, 1999, we published a rule proposing to codify the personal responsibility provisions of PRWORA. The period for comment on the proposed rule ended February 17, 2000. We received comments from 28 State agencies, 37 advocate groups, 7 government entities, and 4 individuals. In this final rule, we will not address comments on provisions that are required by law and on which we have no discretion. We will not discuss comments that supported our proposals. We will not discuss comments that concerned merely technical corrections for inadvertent omissions, we have simply made the corrections. We will not discuss provisions on which we received no comments, and we will adopt these provisions as written. For a full understanding of the background of the provisions in this rule, see the proposed rulemaking, which was published in the **Federal Register** at 64 FR, 70920. With the exceptions noted above, in response to the comments made and for ease of reading we will discuss each provision and the comments made.

7 CFR 273.11—Action on Households with Special Circumstances

Ban on Increased Benefits for Failure To Take Required Action or Fraud—7 CFR 273.11(j)

Section 829 of PRWORA amended Section 8(d) of the Act, 7 U.S.C. 2017(d), to provide that, if the benefits of a household are reduced under a Federal, State, or local law relating to a means-tested public assistance program for the failure of a person to perform an action required under the law or program, then the household may not receive an increased food stamp allotment as the result of that decrease for the duration of the reduction. In addition, the State agency may reduce the household's food stamp allotment by not more than 25 percent. This provision applies when the act leading to the decrease in benefits was intentional or unintentional. If the reduction is the result of a failure to perform an action required under part A of title IV of the Social Security Act, 42 U.S.C. 601, *et seq.* (TANF), the State agency may use the rules and procedures that apply under part A of title IV to reduce the food stamp allotment.

Section 911 of PRWORA provides that if an individual's benefits under a Federal, State, or local law relating to a means-tested welfare or public assistance program are reduced because of an act of fraud by the individual under the law or program, the individual may not, for the duration of the reduction, receive increased food stamp benefits as a result of a decrease in income attributable to such reduction. Since cases of fraud generally involve a failure to take a required action in another program, we proposed to treat sections 829 and 911 similarly. We received no comments on this proposal. Therefore, in this rule we continue to treat sections 829 and 911 similarly in 7 CFR 273.11(j).

We proposed to modify 7 CFR 273.11(k) to provide that a ''means-tested public assistance program'' for purposes of the restriction imposed by Section 829 of PRWORA would include any public or assisted housing under Title I of the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*, any State program funded under part A of Title IV of the Social Security Act, and any program for the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act, and State and local general assistance as defined in 7 CFR 271.2. Title XIX of the Social Security Act was not included because Medicaid benefits are not counted as income for food stamp purposes. A final rule published November 21, 2000, redesignated paragraph (k) as paragraph (j). Therefore in this final, the paragraph concerning no increase in benefits will be referred to as paragraph (j). All subsequent paragraphs in 273.11 will be redesignated accordingly.

All but one of the comments we received opposed the definition of means-tested public assistance program. Most of the commenters opposed the inclusion of any public or assisted housing under Title I of the United States Housing Act of 1937. Commenters pointed out that including housing in this definition is administratively burdensome and error prone. In addition, as with Medicaid, we have never counted housing as income, and therefore, we should not include it in this definition. Finally, State agencies would not be aware if a reduction in housing was caused by a failure to comply with that program.

Several commenters opposed the inclusion of Supplemental Security Income (SSI) in the definition of ''means-tested public assistance program.'' One commenter pointed out that historically it has been difficult to verify with the Social Security Agency (SSA) whether or not a person's SSI overpayment was the direct result of non-cooperation. Another commenter said that the SSA is not able to provide State agencies with this information because SSA considers all overpayments non-cooperation even if agency caused. For example, if the client reports a change, but the SSA does not act on the change timely or makes a computational error, the SSA would consider this non-cooperation.

Many commenters suggested that we restrict the definition of ''means-tested public assistance program'' to the current definitions of public assistance and general assistance found in 7 CFR 271.2. Some commenters suggested that we define ''means-tested public assistance programs'' as TANF only. One commenter suggested that we restrict the definition of ''means-tested public assistance program'' to TANF only, but allow State agencies the option of including general assistance in the definition.

Based on these comments, we have decided to modify the regulations at 7 CFR 273.11(j) to restrict the definition of ''means-tested public assistance programs'' to that of ''public assistance'' and ''general assistance'' as defined in 7 CFR 271.2. We decided not to adopt the one commenter's suggestion to modify the regulations further to give State agencies the option of including ''general assistance'' in the definition. General assistance is a means-tested State or local assistance program. We believe that not including it in the definition of ''means-tested assistance program'' would circumvent the law which specifically provides that this provision applies to '' * * * State or local means-tested programs.''

One commenter suggested we clarify that by ''assistance'' we mean ''cash assistance'' and not merely other benefits or services funded by TANF. While we agree, such non-cash benefits are not counted as income for food stamp purposes, and a reduction in these services due to failure to comply would not trigger an increase in food stamp benefits. Therefore, we do not believe that the regulations at 7 CFR 273.11(j) need to be clarified in this manner.

We proposed that the restriction imposed by section 829 of PRWORA only apply if assistance benefits are reduced for failure of a member of a household to perform a required action if the person was receiving assistance at the time the reduction was imposed. In other words, this provision would only apply to reductions imposed during the period benefits were originally authorized by the other program and to reductions imposed at the time of application for continued benefits if there is no break in participation, but not to reductions imposed at initial application. The majority of the commenters supported this proposal. Only three commenters opposed it. They suggested that the ban on increases apply to applicants of assistance programs as well as recipients. One commenter suggested that this be a State agency option. We are maintaining this provision as proposed at 7 CFR 273.11(j).

We proposed that if a reduction in the assistance benefits was in force at the time the individual applied for food stamps, the State agency would compute the benefits in a manner that would prevent a higher food stamp allotment as a result of the failure to take the required action. The majority of the commenters suggested that the ban on increases should only apply if the individual was receiving food stamps at the time he failed to take a required action in the other program. Several commenters said that the State agency cannot prevent an increase in food stamps if an individual is not receiving food stamps at the time he fails to perform a required action in the assistance program. In addition, several commenters stated that the State agency should advise individuals of the consequences of non-compliance in the assistance program before imposing a penalty in the Program. We agree with these comments. Therefore, we are modifying 7 CFR 273.11(j) to provide that the ban on increasing food stamps will only apply to individuals who are receiving food stamps at the time of the failure to perform a required action in a means-tested assistance program.

We proposed that this provision not apply to situations where individuals reach a time limit for benefits, have a child that is not eligible because of a family cap, or fail to comply with purely procedural requirements such as failure to submit a monthly report or failure to reapply for assistance. The majority of the commenters supported these proposals. One commenter opposed the exclusion of procedural requirements from those that would trigger a sanction because in many cases procedural requirements are in fact substantive. Several commenters suggested we clarify in the regulation what we consider ''procedural'' (which would not trigger a sanction) versus ''substantive'' (which would trigger a sanction). One commenter suggested we include an explicit definition of what is required for a public assistance sanction to trigger a disqualification under this provision. s

Since TANF policies vary substantially from State-to-State, and sometimes even within States, we are not confident that we could conclusively resolve this issue with a foolproof definition. However, based on these comments, we are clarifying the regulations at 7 CFR 273.11(j) to say that this provision does not apply to reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, failing to reapply or complete the reapplication process for continued assistance under the other program, or failure to perform a purely procedural requirement. Further, in this section, we are providing the State agency with the flexibility to determine procedural versus substantive requirements within the following parameters: A procedural requirement, which would not trigger a food stamp sanction, is a step that an individual must take to continue receiving benefits in the program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a food stamp sanction, is a behavioral requirement designed to improve the well being of the recipient family, such as participating in job search activities or ensuring that children receive the proper vaccinations.

Several commenters suggested we clarify that the substantive action must be within the power of the individual in order to trigger a food stamp sanction. For example, an individual is required to attend parenting classes in order to continue receiving assistance. The individual is willing to take the class but the individual is unable to because the classes are full. We agree with this comment. Therefore, we are modifying 7 CFR 273.11(j) to provide that failing to perform an action because the individual is unable to perform, as opposed to refusing, shall not be considered failure to perform a required action.

One commenter suggested that the person not taking the required action must be a member of a certified food stamp household in order for the sanction to be imposed. In some instances, the TANF family unit and the food stamp household are not one and the same. If an individual who is not a member of the food stamp household (such as a roomer) fails to take a required action which precipitates a decrease in the TANF grant, the commenter believes the food stamp allotment should be allowed to rise. We agree with the commenter. Therefore, we are clarifying that in order for this provision to be effective, the individual must be a member of a food stamp household as defined in § 273.1, including ineligible household members such as students. If the individual is a non-household member, such as a roomer, a live-in attendant, or another individual who shares living quarters with the household but who does not purchase food and prepare meals together, this provision would not be effective.

Section 8(d)(1)(A) of the Act, as amended by section 829 of PRWORA, provides that the household may not receive an increase in food stamp benefits and section (8)(d)(1)(B) provides that State agencies may reduce the food stamp allotments by not more than 25 percent. Several commenters suggested we modify the regulations to provide that any percentage reduction in benefits should be calculated from the amount that the household would have received under the regular food stamp benefit formula, taking into account its actual (reduced) income. This would insure that the combination of preventing an increase and further reducing the food stamp allotments would not result in a household receiving an amount of food stamps that is more than 25 percent less than the amount the household would receive if the usual food stamp calculation formula were applied to the family's actual income. We agree with these commenters. Therefore, we are modifying the proposed regulations at 7 CFR 273.11(j) accordingly.

Section 829 of the PRWORA also amended section 8(d)(2) of the Act to provide that if benefits are reduced for a failure of an individual to perform an action required under a program under Title IV–A of the Social Security Act (TANF), the State agency may use the TANF rules and procedures to reduce the food stamp allotments. We interpreted the reference to use of TANF rules and procedures to apply only to procedural aspects such as budgeting and combined notices and hearings. A few commenters pointed out that budgeting procedures, such as use of prospective or retrospective budgeting, are substantive policies that could significantly change the scope and severity of the penalties. Since

budgeting rules can routinely determine whether someone is eligible in a month, and what benefits an individual receives, budgeting procedures should be considered substantive and should not be imported from TANF. State agencies are currently mandated to use TANF budgeting procedures when determining eligibility for food stamp households/TANF households. Current regulations at 7 CFR 273.21(a)(2) provide that State agencies must ''determine eligibility, either prospectively or retrospectively, on the same basis that it uses for its (TANF) program, unless it has been granted a waiver by FNS.'' Based on this, we are retaining the provision as written.

We proposed that the prohibition on increasing the food stamp allotment be for the duration of the reduction in the assistance program. At the same time we proposed that the maximum length of the food stamp sanction not exceed one year. Several commenters pointed out that there is a discrepancy between these two provisions. We believe that the prohibition on increasing benefits must be for the same months as the decrease in assistance to the extent possible, even if there is a break in participation. If the penalty in the other program is six months, then the food stamp sanction must be for the same six months, to the extent possible. We also believe that the prohibition on increasing food stamp benefits not be longer than a sanction for an Intentional Program Violation (IPV), and, therefore, we proposed that the prohibition not be longer than a year. The majority of the commenters supported the idea of a time limit on the penalty. Several suggested a shorter time frame, such as six months. Several suggested State agencies be allowed to set the time frame as long as it was less than one year. One commenter suggested the time frame for the sanction be the same as the food stamp certification period. A few commenters opposed the one-year limit because it was too short. These commenters suggested State agencies should be allowed to keep the food stamp sanction in place as long as the penalty in the other program is in effect and the assistance program remains open. The majority of the commenters supported the concept of a time limit. However, there was no consensus on how long that time limit should be. Our further legal review of the statutory authority resulted in a modification of the proposed rule. Therefore, we have provided that the sanction shall not exceed the sanction period in the other program. If at any time the State agency can no longer ascertain the amount of the reduction, then the State agency may terminate the food stamp sanction. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, it would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time. In the final rule at 7 CFR 273.11(j) we clarify that the ban on increasing food stamps is for the duration of the reduction in the assistance program. The State agencies may determine the length of the food stamp sanction providing it does not exceed the sanction in the other program, and does not exceed one year, without review.

We proposed that the State agency be allowed to shorten the prohibition on increasing benefits to less than one year if the individual becomes ineligible during the sanction period for some other reason. A few commenters suggested that State agencies be allowed to lift the sanction when the individual's case is closed in the other assistance program. Several commenters suggested that we require the State agencies to do this. Several commenters said that this would be administratively burdensome: how would the State agency know that the household was ineligible for some other reason since this isn't a reportable change? We agree that the individual should not be sanctioned when he is no longer eligible for the assistance program or when his case is closed. We believe the requirement to report a change in the amount of income will generally capture the instances when an individual whose assistance grant is reduced then becomes ineligible for another reason. However, we recognize that there are instances where food stamp reporting requirements won't capture this information. Therefore, we are modifying the regulations at 7 CFR 273.11(j) to provide that the State agency must lift the ban on increasing food stamp benefits when it becomes aware that the individual is ineligible during the sanction period for some other reason, or when his case is closed.

We proposed that if an individual fails to perform a required action in a State or local assistance program, and the individual moves within the State, the prohibition on increasing benefits goes with that person. We proposed that it be terminated if the person is ineligible for the assistance program for some other reason or if the individual moves out of State. We proposed that if an individual fails to perform a required action in a Federal program, and the individual moves, either interstate or intrastate, the State verify the status and continue the disqualification if appropriate. The majority of the commenters opposed tracking penalties, particularly from State-to-State because it is administratively burdensome and error prone. We agree with these comments. Therefore, we are removing the provision at 7 CFR 273.11(j) which requires tracking penalties from State-to-State. However, we believe if an individual moves intrastate, the State agency should be aware of penalties levied by Federal, State or local public assistance programs. Therefore, we are retaining the provision which provides if an individual moves within the State, the prohibition on increasing benefits shall be applied to the gaining household unless that person is ineligible for the assistance program for some other reason.

We proposed to remove the exception from 7 CFR 273.11(j) that the prohibition on increasing food stamp benefits did not apply in the case of individuals or households subject to the food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2). We believe the law allows the State agency to disqualify the individual for food stamp purposes and prohibit an increase in food stamps as the result of the reduction of assistance. We failed to mention in the preamble of the proposed rule that the law also permits the State agency to further reduce the food stamp allotment by up to 25 percent even if there is some overlap.

Several commenters opposed the proposal that the same conduct could be subject to multiple punishments. They pointed out that the subsequent penalty could be more severe than an IPV. One commenter suggested that the law did not authorize State agencies to ''pile on'' penalties, but gave them a choice among penalty systems. This commenter suggested that where both section 8(d) (no increase in benefits and or reduction by 25 percent) and section 6(i) (comparable disqualification), or section 6(d) (disqualification for failure to comply with TANF work requirements) of the Act apply to the same conduct, the household should receive the most severe of the penalties that apply in any given month, not the combined effect for them all, and the food stamp penalty should take precedence.

We consulted our legal authority and have determined that we do not have the discretion to limit the penalties the State agency may apply under sections 8(d) and sections 6(i) of the Act. The law clearly prohibits State agencies from increasing food stamp allotments and

gives them the option to further decrease the food stamp allotment by 25 percent. Separate and apart from these provisions, it gives them the option to disqualify individuals who are disqualified from a means-tested assistance program. There is no connection between the two penalties which can be construed as giving us the discretion to limit them. Therefore, we are not adopting the commenters' suggestions to limit the penalties by making only the most severe penalty apply. However, we urge the State agencies to carefully balance desires to support TANF policies with family food needs when choosing which optional provisions to apply.

We are retaining our proposal to remove the exception from 7 CFR 273.11(j) that the prohibition on increasing food stamp benefits did not apply in the case of individuals or households subject to the food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2). If an individual who is exempt from food stamp work registration is sanctioned under TANF for failing to comply with TANF work requirements, the individual must be disqualified from the Program. If we keep the exception in place, individual's food stamp benefits would rise in response to the decrease in income caused by the TANF sanction. One of the main thrusts of PRWORA was to help individuals become self sufficient by encouraging them to work if they are able. One of the main reasons behind these provisions (section 829 and 819 of PRWORA) was to support other programs' penalties. Individuals who fail to comply with a means-tested assistance program for any other reason and are subsequently disqualified from that program can be disqualified from the Program and have their food stamp benefits held constant. To make an exception for individuals who fail to comply with TANF work requirements is inconsistent with the spirit of the law. Therefore, we are removing the exception as proposed.

We emphasized in the preamble of the proposed rule that during the sanction the State agency must act on changes that would affect the household's benefits which are not related to the assistance violation. Several commenters pointed out that we left this out of the regulation language. This was an inadvertent error and we have corrected it in the final rule.

One commenter suggested that the rule should explicitly state that if the public assistance program determines that the reduction was not appropriate, any food stamps that the household was denied under this provision be restored. We agree that a household should not suffer if the public assistance program or the State agency administering the Program later determines that the reduction in the public assistance grant was not appropriate. At the same time, we cannot support the household's unduly benefiting. For example, if the public assistance program restores benefits, then the household would not be entitled to restored food stamp benefits. However, if the State agency chooses the option to further reduce the food stamp benefits by up to 25 percent and it is later determined that the reduction in the public assistance grant was inappropriate, then the household would be entitled to restored benefits. Currently, the regulations at 7 CFR 273.17 require the State agency to restore lost benefits if the loss was caused by an error by the State agency, an IPV which was reversed or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Instead of detailing all of these circumstances in the regulations, we have decided to modify 7 CFR 237.11(j) to provide that the State agency must restore lost benefits when necessary if it is later determined that the reduction in the public assistance program was not appropriate.

We proposed to revise 7 CFR 273.9(b)(5)(i) so that the total amount of welfare or public assistance, rather than the total amount minus the repayment amount, is counted as income for food stamps purposes when the overissuance in the PA program was caused by the household. The majority of the commenters opposed this proposal. Several commenters argued that this proposal is administratively complex and error prone. The State agency would have to contact the other program to determine if the overpayment was administrative or client caused. Several commenters argued that we should not assume all overpayments are the result of a failure to take a required action or even fraud, as many overpayments are either inadvertent household errors or errors caused by the program. Several commenters stated that this would result in a form of double jeopardy—we would count benefits as income in the usual manner, and again when they are recouped after the overpayment is found. A few commenters suggested we only count the amount of the repayment in the case of fraud. In light of these comments, we have decided not to make the proposed change at 7 CFR 273.9(b)(5)(i).

One commenter pointed out that we require State agencies to indicate in their State Plan of Operations if they are implementing optional provisions of this rule. However, we failed to require State agencies to indicate in their plans if they have chosen to implement the optional provision to reduce the food stamp allotments by up to 25 percent. This was an inadvertent error. We have modified 7 CFR 272.2 and 273.11(j) accordingly.

Comparable Disqualifications—7 CFR 273.11(k)

Section 819(a) of the PRWORA amended Section 6 of the Act, 7 U.S.C. 2015, to provide that if a disqualification is imposed on a member of a food stamp household for a failure of the member to perform an action required under a Federal, State, or local law relating to a means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the Food Stamp Program. In addition, the State agency may use the rules and procedures that apply under TANF to impose the same disqualification under the Food Stamp Program. Finally, after the disqualification period has expired, the member may apply for food stamp benefits and shall be treated as a new applicant.

We proposed to add a new section, 7 CFR 273.11(l) to codify this provision (now § 273.11(k)). Several of our proposals under this provision paralleled our proposals to implement section 829 and 911 of PRWORA at 7 CFR 273.11(j). For example, we proposed that neither of these provisions would apply to individuals who are initially applying for benefits from a means-tested assistance program. In general, the comments we received spoke to the parallel provisions. Where the provisions are similar we have discussed the comments and our rationale for our decisions in the previous discussion of section 829 and 911 of PRWORA, or 7 CFR 273.11(j). Therefore, we will not repeat the discussion here. However, we lay out our proposals and our decisions as they relate to this particular section. Where the provisions and our proposals differ, we provide a complete discussion of the provision, our proposal, the comments we received and our decision.

Parallel Provisions

(1) We proposed at 7 CFR 273.11(l) that the penalty applied only if an individual was receiving assistance at the time the disqualification was imposed by the other program and at the time of application for continued benefits if there was no break in participation. We proposed that this

provision would not apply if the person was disqualified upon initially applying for an assistance program. We are maintaining this provision as written at 7 CFR 273.11(k).

(2) We proposed at §273.11(l) that if an individual was disqualified from an assistance program and the disqualification was still in effect when he initially applies for food stamps, then the State agency may disqualify him from food stamps at the initial application. We have revised this provision at 7 CFR 271.11(k) to provide that the individual must be receiving food stamps at the time of the disqualification in the other program in order to be disqualified from food stamps.

(3) We proposed at 7 CFR 273.11(l) that this provision not apply to reaching a time limit for time-limited benefits or having a child that is not eligible because of a family cap. In addition, we proposed that this provision not apply to purely procedural requirements such as a failure to submit a monthly report or failure to reapply for assistance. We are clarifying the regulations at 7 CFR 273.11(k) to provide that this provision does not apply to: (1) Reaching a time limit for time-limited benefits, (2) having a child that is not eligible because of a family cap, (3) failing to reapply or complete the reapplication process for continued assistance under the other program, (4) failing to perform an action that the individual is unable to perform as opposed to refusing to perform, or, (5) failing to perform a purely procedural requirement. We are providing that the State agency has the flexibility to determine procedural versus substantive requirements within the following parameters: (1) A procedural requirement, which would not trigger a sanction, is a step that an individual must take to continue receiving benefits in the program such as submitting a monthly report form or providing verification of circumstances; and (2) a substantive requirement, which would trigger a sanction, is a behavioral requirement designed to improve the well-being of the recipient family, such as participating in job search activities or ensuring that children receive the proper vaccinations.

(4) We proposed that the food stamp disqualification period be limited to the same period of time as the disqualification in the assistance program, to the extent possible. We also proposed that the maximum length of the food stamp disqualification in these circumstances be no more than one year. We are retaining the provision that the disqualification be concurrent to the extent possible with the disqualification in the other program. We are also providing that the State agency may determine the length of the disqualification as long as it does not exceed the disqualification in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, it would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time.

(5) We proposed at 7 CFR 273.11(l) that the State agency be allowed to shorten the food stamp disqualification period if the person becomes ineligible to participate in the other program for some other reason during that one-year time period. We are modifying the regulations at 7 CFR 273.11(k) to provide that a State agency must lift the food stamp disqualification when it becomes aware that the individual is ineligible for assistance for some other reason.

(6) We are modifying 7 CFR 237.11(k) to provide that the State agency must restore lost benefits when necessary if it is later determined that the reduction in the public assistance grant was not appropriate.

Provisions Unique to 7 CFR 273.11(k)

We proposed at 7 CFR 273.11(l) that the assistance program under which the disqualification was imposed, has to be authorized by Federal, State or local law, but that the specific disqualification penalty does not have to be specified in the law. Several commenters argued that in order for a State to sanction an individual under this provision, the action, not just the program, should be explicitly required by law. One commenter argued that the action should be required under law or formal written policy. We believe that the law provides that the program not the action must be specified in the law. Therefore, in the final rule at § 273.11(k) we are retaining the provision as proposed.

We interpreted the term, ''means-tested public assistance program'' to include any public or assisted housing under Title I of the United States Housing Act of 1937; any State temporary assistance for needy families funded under part A of Title IV of the Social Security Act; and any program for the aged, blind, or disabled under Titles I, X, XIV, or XVI of the Social Security Act; Medicaid under Title XX of the Social Security Act; and State and local general assistance as defined in 7 CFR 271.2. The majority of the commenters opposed this provision for the same reasons they opposed this definition for Section 829 of PRWORA. In addition, they opposed the inclusion of Medicaid in this definition. They suggested that the definition be restricted to the definition of ''public assistance'' and ''general assistance'' as defined in the food stamp regulations. Based on these comments, and in the interest of consistency with section 7 CFR 273.11(j), we have decided to modify the regulations at 7 CFR 273.11(k) to restrict the definition of ''means-tested public assistance programs'' to that of ''public assistance'' and ''general assistance'' as defined in 7 CFR 271.2

Since the law makes the comparable disqualification provision a State option, we proposed to allow State agencies the discretion to apply this provision to some, but not all, means-tested public assistance programs. Further, we proposed to allow State agencies to choose which disqualifications within a specific program it wants to impose for food stamp purposes. The majority of the comments we received supported this provision. Only one commenter opposed the provision that allows the State agency to apply it selectively. Because the majority of the commenters supported these provisions, and we believe that allowing State choice would further Program goals, we are retaining them as written at 7 CFR 273.11(k).

We proposed that for food stamp purposes only the individual can be disqualified, rather than the whole household. The majority of the commenters supported this provision. Therefore, we are retaining it as written.

We proposed that when a household member is disqualified from food stamp eligibility under section 6(a)(2) of the Act, the State agency count all of the member's resources and either all or a pro rata share of the income and deductible expenses as available to the household. The majority of the comments opposed allowing the State agencies the option of counting all of the individual's income as available to the household. They argue that this is too punitive. They contend that if a State agency chose to count all of the income as available to the household, it would be imposing the same penalty as for an IPV and that penalties comparable to IPVs should come at the direction of Congress as it did in the cases of drug felons and immigrants ineligible under section 6(f) of the Act. We agree with these comments and, accordingly, we have decided to modify

the regulations at 7 CFR 273.11(k) to provide that the State agency must count all of the resources and all but a pro-rata share of the income of the disqualified member as available to the household in accordance with 7 CFR 273.11(c)(2).

School Attendance—7 CFR 273.11(l)

Section 103 of PRWORA amended Part A of Title IV of the Social Security Act, 42 U.S.C. 601, *et seq.*, to provide for block grants to States for TANF. The title of Section 404 of the amended Part A of Title IV is ''Use of Grants.'' Section 404(i) provides that a State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who has received assistance under the Food Stamp Program, if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside. Section 404(j) provides that a State to which a grant is made under section 403 shall not be prohibited from sanctioning a family that includes an adult who is older than age 20 and younger than age 51 and who has received assistance under the Program, if such adult does not have, or is not working toward attaining, a secondary school diploma or its recognized equivalent unless such adult has been determined in the judgment of medical, psychiatric, or other appropriate professionals to lack the requisite capacity to successfully complete a course of study that would lead to a secondary school diploma or its recognized equivalent.

We interpreted these provisions to pertain to TANF sanctions only. We proposed that States may not apply a separate food stamp sanction to households based on sections 404(i) and (j). We included a reference to these provisions in 7 CFR 273.11, Action on Households with Special Circumstances. In addition, we proposed that if an individual was sanctioned under TANF, then the State agency must apply 7 CFR 273.11(j), prohibiting an increase in food stamp benefits as a result of a reduction in public assistance benefits, and it may apply 7 CFR 273.11(k), regarding comparable disqualifications. We also proposed that if a State agency elected the optional reduction, then it should include it in its State Plan of Operation. All of the comments we received supported our interpretation that these provisions applied to TANF sanctions only. One commenter stated that our regulations were unnecessarily long, and that a simple statement that these provisions do not provide independent authority for food stamp sanctions beyond any that may apply though sections 6(i) or 8(d) of the Act would be sufficient. One commenter questioned the necessity to include these provisions in the State Plan of Operation since they are already included under 7 CFR 273.11(j) and (k). We agree with both of these commenters. Therefore, we are combining these two provisions into a single provision at 7 CFR 273.11(l). We are providing that these provisions do not provide for a separate food stamp sanction beyond those that are provided for in 7 CFR 273.11(j) and (k). In addition, we are removing the requirement at 7 CFR 272.2 that State agencies include this in their State Plan of Operations. Finally, we are not including these individuals in the list of non-household members at 7 CFR 273.1(b).

Cooperation with Law-Enforcement Authorities—7 CFR 272.1(c)(1)(vii)

We proposed amending 7 CFR 272.1(c)(1) to implement section 837 of PRWORA which requires State agencies to disclose certain information regarding food stamp participants to law enforcement officers. Under proposed paragraph 7 CFR 272.1(c)(1)(vii), which essentially tracks the statutory language, a State agency, upon the written request (including the name of the household member) of a Federal, State, or local law enforcement officer, would be required to disclose the address, social security number and, if available, a photograph of any household member where the member is: (1) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime (or attempt to commit a crime) that, under the law of the place the member is fleeing, is a felony (or, in the case of New Jersey, a high misdemeanor); or (2) is violating a condition of probation or parole imposed under Federal or State law; or (3) has information that is necessary for the officer to conduct an official duty related to a member of the household who is fleeing to avoid prosecution or custody for a felony.

One commenter generally opposed the proposed provision based on the belief that it is unnecessary since State agencies are already free to cooperate with law enforcement agencies. Another commenter wanted to know if the State agency should withhold an eligibility determination if a law enforcement officer is seeking information regarding an applicant who may be fleeing from prosecution or custody for a felony or may have violated a condition of probation or parole. Other commenters requested clarification of some of the provisions in the proposed rule, specifically regarding information about a household member who is not a violator him or herself but who may have information regarding a violator. In response to these comments we are making the language of the final rule more specific. We are clarifying that a request from a law enforcement officer for information regarding a household member who may be fleeing to avoid prosecution or custody would not be sufficient to withhold an eligibility determination or to terminate the participation of such an individual. However, as provided by the amendment made by sections 115 and 821 of PRWORA (discussed below), documentation that the household member is, in fact, a fleeing felon, or is violating a condition of probation or parole, would be sufficient to terminate the eligibility or deny the application of the member. We are also clarifying that this provision authorizes law enforcement officers to obtain information regarding household members who, although not fleeing to avoid prosecution or custody themselves, have information regarding other members who are, in fact, fleeing felons. We are taking this opportunity to remind State agencies that this provision in no way requires them to collect photo IDs as a condition of eligibility. Though the regulations at 7 CFR 273.2(f) require State agencies to verify identity, they are very clear that any document which reasonably establishes the applicant's identity must be accepted. The State agency may not impose a requirement for a specific type of document such as a photo ID.

Finally, the rule notes that the State agency shall only disclose the information as is necessary to comply with a specific written request, which is authorized by the rule, of the law enforcement agency.

Verification of Criteria Related to the Commission of Crimes (Drug-related Felonies, Flight to Avoid Prosecution or Incarceration, and Violations of Parole or Probation)—7 CFR 273.2(f)(1)(ix)

Under section 115 of PROWRA, an individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6)) is not eligible to participate in the Food Stamp Program unless the State agency through legislation elects to opt out of the disqualification provisions of the statute. Under section 6(k) of the Act, 7 U.S.C. 2015(k) as

amended by section 821 of PRWORA, individuals who are fleeing to avoid prosecution, or custody or confinement after conviction, for a crime classified as a felony under the law of the place from which the individual is fleeing, or violating a condition of probation or parole imposed under a Federal or State law are ineligible to participate in the Program. We proposed amending 7 CFR 273.2(f)(1) to require that each State agency establish a system or systems to verify the status of food stamp applicants/recipients to determine if they would be subject to disqualification under section 115 or section 821 of PRWORA. One commenter expressed general support of the rule as written. A number of commenters expressed strong opposition to this proposal indicating that establishment of a system of verification would result in a significant burden on affected State agencies. Several State agencies indicated that since access to existing databases containing criminal records is generally limited to law enforcement agencies, State agencies would not be able to utilize such databases to determine whether an applicant would be subject to disqualification under section 115 or 821, making verification extremely difficult since there is no current nationwide database which is accessible to State welfare agencies.

Based on their experience, a number of State agencies expressed the opinion that a statement on the application form requiring individuals subject to disqualification based on convictions for drug related felonies to identify themselves as such would be sufficient to identify those individuals for the purposes of the Program. In response to these comments, we are eliminating the requirement that State agencies establish systems to verify whether an applicant has been convicted of a drug-related felony. With respect to verification of other criminal activity such as flight to avoid prosecution or custody, or violation of a condition of probation or parole, we feel that, based on the comments, it would be impracticable to mandate the establishment of State systems to verify such activity. We also believe that in the overwhelming majority of cases as soon as a household member is identified by a law enforcement agency as an individual who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of parole or probation, that individual would be taken into custody, and as such, would no longer be a member of a household eligible to participate in the program. Based on these factors the final rule will not include a provision mandating the establishment of systems to verify whether applicants are fleeing to avoid prosecution or custody, or have violated a condition of probation or parole.

Applicability of SSI Categorical Eligibility to Individuals Subject to Disqualification Under Section 115 of PRWORA—7 CFR 273.2(j)(2)(vii)

Since publication of the proposed rule, it has come to our attention that it will be necessary to address the issue of whether section 115 of PRWORA (disqualification based on a conviction of a drug-related felony) applies to individuals who are categorically eligible to participate in the Program based on their eligibility to participate in the Supplemental Security Income (SSI) Program. Under 7 CFR 273.2(j)(2), households in which all persons receive or are authorized to receive SSI are considered categorically eligible to participate in the Program. Under 7 CFR 273.2(j)(2)(vii)), certain individuals who are statutorily ineligible based on nonfinancial eligibility criteria shall not be considered as part of an otherwise categorically eligible household. We believe that individuals who are ineligible to participate in the Program as the result of the operation of section 115 of PRWORA are similarly situated since their ineligibility is the result of a statutory provision unrelated to financial eligibility. Accordingly, we are amending 7 CFR 273.2(j)(2)(vii) by adding a new subparagraph (D) which specifically provides that an individual who is ineligible under 7 CFR 273.11(m) by virtue of a conviction for a drug-related felony shall not be included in a categorically eligible household. Although 7 CFR 273.2(j) also confers food stamp categorical eligibility on persons who are authorized to receive assistance under the TANF Program, it is not necessary to address the applicability of disqualification under section 115 of PRWORA to potentially categorically eligible TANF recipients convicted of drug-related felonies since section 115 of PRWORA also prohibits individuals convicted of drug-related felonies from participating in the TANF Program.

Disqualification Based on the Conviction of a Drug-Related Felony—7 CFR 273.11(m) and 273.11(c)(1)

Under Section 115 of PRWORA, an individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substances Act) is not eligible to participate in the Program unless the State agency through legislation elects to opt out of the disqualification provisions of the statute. Three commenters requested that we clarify the effective date of this provision. Although we addressed this issue in the implementation section of the preamble of the proposed rule, we have revised the language of 7 CFR 273.11(m) in the final rule to expressly provide that the disqualification provision only applies to convictions for crimes occurring subsequent to August 22, 1996. Some commenters also expressed the opinion that counting the resources and income of a person disqualified based on a drug-related felony conviction was unduly punitive. We are retaining the provision in the proposed rule since it is based directly on the statute (section 115(b)(2) of PRWORA) with no agency discretion. One commenter wanted to know if a conviction for a drug-related felony occurring during the certification period should be considered a reportable change. We are not mandating that the conviction be a reportable change although we anticipate that State agencies would act to disqualify a household member who is convicted of a drug-related felony during the certification period if the household voluntary reports such a change or if it becomes otherwise known to the State agency. We also believe that in most cases a conviction for a drug-related felony (as opposed to a misdemeanor) would result in the incarceration of the household member resulting in a reportable change based on household composition since the individual convicted and subsequently incarcerated would no longer be a household member. One commenter suggested that the regulation provide more detail regarding the treatment of the disqualified member's income and resources. Although we feel that the current regulations (including the proposed changes adding convicted drug felons) at 7 CFR 273.11(c) provide sufficient detail regarding the treatment of the income and resources of certain disqualified household members and that an expanded description of the applicable procedures is unnecessary, we have added a cross-reference to 7 CFR 273.11(c)(1) at 273.11(m).

For general information, the following 19 States have either opted out or limited the disqualification time period: Louisiana, Oklahoma, Illinois, Michigan, Minnesota, Ohio, Wisconsin, New Hampshire, New York, Vermont,

New Jersey, North Carolina, Colorado, Iowa, Utah, Hawaii, Nevada, Oregon and Washington.

7 CFR 273.11(n)—Disqualification of Fleeing Felons and Probation/Parole Violators

Under section 821 of PRWORA, individuals who are fleeing to avoid prosecution, or custody or confinement after conviction, for a crime classified as a felony under the law of the place from which the individual is fleeing, or violating a condition of probation or parole imposed under a Federal or State law are ineligible to participate in the Program. One commenter expressed concern regarding the vagueness of the term, ''violating a condition of probation or parole''. Although we agree that the term is somewhat vague we do not believe that it would be possible to provide a definition with any specificity since conditions of probation or parole vary greatly among individuals. We also wish to note that, in most cases once a determination is made that an individual is violating a condition of probation or parole, the individual will be taken into custody and would be ineligible to participate in the Program on the basis that the individual is a resident of an institution rather than a member of the household. One commenter suggested that we clarify that once an individual is released from supervision he or she would no longer be considered in violation of a condition of probation or parole. We have considered the comment and have elected not to specifically address the issue in the regulatory language since we feel that the determination of whether an individual is considered to be violating a condition of parole or probation would be a determination of (State or Federal) courts and/or law enforcement authorities.

One commenter suggested we include a cross reference to 7 CFR 273.11(c)(1) regarding the treatment of income and resources of the ineligible member. We agree with the commenter and are making the change at § 273.11(n) to include the cross reference.

Cooperation With Child Support—7 CFR 273.11(o) and (p)

Section 822 of PRWORA amended section 6(l) of the Act (7 U.S.C. 2015(l)) to allow State agencies to disqualify a natural or adoptive parent or other individual (collectively referred to as ''the individual'') who is living with and exercising parental control over a child under the age of 18 if the custodial parent does not cooperate with the State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651 *et seq.*,) (the State Child Support Agency) in establishing paternity and collecting support for the child and or the individual without good cause. The provision requires the Department, in consultation with the Department of Health and Human Services (DHHS), to develop standards for what will constitute ''good cause'' for refusal of a custodial parent to cooperate. Section 822 of PRWORA also amended Section 6 of the Act by adding subsection (m) to give State agencies the option to disqualify the non-custodial parent who refuses to cooperate with the State Child Support Agency in establishing the paternity of a child and providing support for the child.

One commenter suggested we define ''custodial parent'' versus ''non-custodial parent'' for purposes of these provisions. We agree that a definition is warranted. Therefore, for purposes of this provision, a custodial parent is one who lives with his or her child under the age of 18. A ''non-custodial parent'' is one who does not live with his or her child who is under the age of 18.

Several commenters suggested that we require the State agencies to notify applicants of the requirement to cooperate with the State Child Support Agency as a condition of eligibility. Without knowledge that a cooperation requirement exists and what will be required to comply, an individual cannot be expected to comply. We agree with these comments. Therefore, we are modifying both 7 CFR 273.11 (o) and (p) to require the State agency provide notification of this requirement in writing to applicants for initial benefits and for continued benefits.

Custodial Parent—7 CFR 273.11(o)

We proposed that the State agency make the cooperation and the good cause determination. Several commenters argued that we do not have the authority to determine if an individual is cooperating with the State Child Support Agency. A couple of commenters pointed out that the Social Security Act, as amended by section 5548 of Pub. L. 105–33, gives the State Child Support Agency the authority to make this determination. Section 454(29)(A) of the Social Security Act provides that the State Child Support Agency ''shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under * * * the Food Stamp Program * * * is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying or enforcing a support order for, any child of the individual by providing the State Child Support agency with the name of, and such other information as the State Child Support agency may require with respect to, the non-custodial parent of the child, subject to good cause and other exceptions * * *.'' Furthermore, section 454(4)(A)(IV) of the Social Security Act provides that the State Child Support Agency ''* * * provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations * * * with respect to each child for whom cooperation is required pursuant to section 2015(l)(1) of title 7 (the Food Stamp Program) * * *.'' One commenter suggested that our regulations simply clarify the process by which the State agency would be notified by the State Child Support Agency that the individual has failed to cooperate. Section 454(29)(E) provides that the IV–D agency must ''promptly notify the individuals and the State agency administering * * * the Food Stamp Program * * * of each determination, and if non-cooperation is determined, and the basis thereof * * *.''

When PRWORA was enacted in August of 1996, it did not include changes to the Social Security Act which addressed cooperation with the State Child Support Agency for food stamp recipients. However, the Balanced Budget Act of 1997 (Pub. L. 105–33) amended the Social Security Act to include references to the Food Stamp Program as detailed above. Subsequently, TANF has published final regulations implementing section 454 of the Social Security Act which also requires TANF applicants and recipients to cooperate with the State Child Support Agency as an eligibility requirement. Based on these developments, and on comments, we have decided to modify the proposed regulations at 7 CFR 273.11(o) to provide that if the State Agency chooses to implement this provision, it must refer the appropriate individuals to the State Child Support Agency.

The proposed definition of cooperation was based on wording used at the time by DHHS. We proposed that the individual must cooperate with the State agency in obtaining support by: (1) Establishing the paternity of a child born out of wedlock; (2) obtaining support payments for the child or the individual and the child; and (3) obtaining any other payments or property due the child or the individual and the child. We also proposed that the following actions be included in the definition: (1) Appearing at an office of

the State or local agency or the child support agency to provide verbal or written information; (2) appearing as a witness at judicial or other hearings or proceedings; (3) supplying information in establishing paternity; and (4) paying to the child support agency any support payments received from the absent father. We received a number of comments on our proposed definition. Several commenters suggested that we refer to the final TANF regulations as an example. Several other commenters suggested changes to the proposed language defining cooperation. However, because it is the State Child Support Agency that makes the cooperation determination, and the definition of cooperation is embedded in section 454(29) of the Social Security Act, we have decided that it is not necessary to detail in our regulations the definition of cooperation beyond what is provided for in section 822 of PRWORA. Therefore, in this final rule at 7 CFR 273.11(o), we are deleting our proposed definition of cooperation and replacing it with an abbreviated version which is based on section 822 of PRWORA and section 454(29) of the Social Security Act. We provide that the individual must cooperate with the State Child Support Agency in establishing paternity, and in establishing, modifying, or enforcing a support order with respect to the child in accordance with section 454(29) of the Social Security Act.

A few commenters suggested that, if an individual is already participating in TANF, Medicaid or the State Child Support program, the individual would already be deemed as cooperating for food stamp purposes. We believe this would simplify the administration of this provision. Therefore, we are modifying 7 CFR 273.11(o) to provide accordingly.

Several commenters suggested that since this is an optional provision we allow the State agencies to apply this provision selectively, e.g. to parents but not other individuals. One commenter suggested we give State agencies the option to limit this provision to those groups of people who the State agency decides that child support cooperation requirements are appropriate. One commenter suggested that we define ''other individual'' as a ''legally responsible adult.'' We believe that the State agency at a minimum should apply this provision to natural and adoptive parents. However, we agree that the State agency should have some latitude to apply this provision to those other individuals that it deems appropriate, whether or not those individuals are the ''legally responsible adults.'' Therefore, we are modifying the regulations at 7 CFR 273.11(o) to provide that if the State agency chooses to implement this provision it must apply it to all natural and adoptive parents and, at State option, it may apply it to other individuals. This information must be included in the State Plan of Operation as required at 7 CFR 272.2

We proposed to adopt DHHS' provisions concerning good cause exceptions. We listed the circumstances under which cooperation may be against the best interests of the child and would not be required. Again, we received a multitude of comments on this subject. The commenters either suggested we be less prescriptive and let the State agencies define good cause, or more prescriptive, but adjust the wording to encompass more situations which would be considered good cause. One commenter said we should allow the State agencies to recognize additional situations in which cooperation would be contrary to the best interests of the child. A few commenters suggested we have a less onerous burden of good cause. For example, the emotional or physical harm should not have to be to the extent that it ''reduces [the individual's] ability to care for the child adequately'' or that the ''emotional impairment * * * substantially affects the individual's functioning.'' Several commenters suggested that we go beyond that which is in the best interests of the child and take into consideration the best interests of the parent or other individual. Several commenters suggested that our good cause exemptions related to domestic violence are too narrowly drawn and would require the food stamp agencies to make impossible and dangerous judgments. Several commenters suggested we allow a good cause exemption based on the TANF exemption for victims of domestic violence. Finally, several commenters suggested that the inability to cooperate be considered good cause.

We have been advised by the DHHS that the definition and determination of good cause is left up to either the State Child Support Agency or the State TANF program. Based on the comments and our consultation with DHHS and in the interest of conforming to current TANF and Medicaid regulations, simplifying the administration of this provision, and reducing the potential for errors, we have decided to modify our regulations. Therefore, at 7 CFR 273.11(o) in this final rule, we provide that if a State agency chooses to implement this provision, it must, adopt the good cause criteria that its State TANF program or its State Child Support Agency uses, whichever agency defines good cause for non-cooperation. In addition, if those good cause provisions do not take into consideration the threat of domestic violence, State agencies must consider if cooperating with the State Child Support Agency would make it more difficult for individuals to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence. For purposes of this provision, the term ''domestic violence'' means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

Finally, we provide that the State agency may define additional good cause criteria in consultation with the State Child Support Enforcement Agency or the State TANF Program, whichever agency is appropriate, and identify the additional criteria in the State plan.

One commenter noted that good cause should address situations where a parent or caretaker may be willing but unable to pursue child support enforcement. For example, the parent or caretaker may lack information about the absent parent. Some custodial parents and other caretakers may simply not know the identity of a child's father. We agree with this commenter that there are instances where the individual cannot provide any information on the father. However, we believe this situation will be covered by the State Child Support or TANF agency's definition of good cause. As indicated above, the State agency must adopt the same criteria as the State Child Support or TANF agency uses for good cause. In the event that this situation is not covered by the State Child Support or TANF agency's definition of good cause, we urge State agencies to adopt the criteria that the inability to provide information about the father is considered good cause.

One commenter suggested that if the State TANF and Medicaid programs have already granted good cause then we should also do so for food stamp purposes. We agree with the commenter, especially since we are adopting the good cause provisions from

the State TANF program or the State Child Support Agency. Therefore, we are modifying the regulations at 7 CFR 273.11(p), to provide that if the State TANF program or State Child Support Agency has already established that the individual has good cause for non-cooperation, then the State agency must accept that for food stamp purposes. If the State TANF program or the State Child Support Agency determines that the individual does not have good cause for refusing to cooperate, then the State agency must determine if the individual meets the good cause criteria for domestic violence or for any additional criteria the State agency has identified.

We proposed that the individual provide evidence to corroborate the claim of good cause. We received several comments regarding our proposal. All of the comments opposed our requirements as being too burdensome. A few commenters suggested that individuals be permitted to substantiate claims with a sworn statement. One commenter suggested we broaden our definition of good cause so those individuals should not have to offer additional proof that these circumstances would make the pursuit of child support against the best interests of the child.

Again we consulted with our counterparts at DHHS. Based on the comments and our discussions with DHHS, we have decided that the State agency must adopt the corroboration standards mandated by either the State Child Support Agency or the State TANF program, whichever agency in the State defines and determines good cause. We believe this will simplify administration of this provision and provide consistency with TANF, Medicaid and the State Child Support Agency. Therefore, we provide accordingly in this final rule at 7 CFR 273.11(o).

We proposed that if the State agency determines that the custodial parent has not cooperated without good cause, then that individual (and not the entire household) would be ineligible to participate in the Program. We received no comments on this provision and are adopting it as final at 7 CFR 273.11(o).

We proposed that the disqualification period be over as soon as it is determined that the individual is cooperating with the State Child Support Agency. An integral aspect of this requirement is that the State agency must have procedures in place to re-qualify an individual once cooperation has been established. We solicited comments on systems already in use. We received none. Therefore, we are adopting these provisions as final.

We proposed that the State agency count all of the disqualified individual's resources, but to give State agencies the option to count all or all but a pro rata share of the individual's income as available to the household. The majority of the comments we received on these provisions opposed allowing the State agencies the option to count all of the income as available to the household. They believe this is too punitive and is not in the best interest of the children. We agree. Therefore, in this final rulemaking we are amending 7 CFR 273.11(c) and 7 CFR 273.11(o) to provide that all but a pro rata share of the ineligible member's income is counted as available to the household.

Section 6(l) of the Act prohibits the payment of a fee or other cost for services provided under a Part D of Title IV, the Child Support Enforcement Program. Subsequently, section 454(6) of the Social Security Act (42 U.S.C. 654(6)) has been amended to prohibit the State Child Support Agency from charging application fees for furnishing such services if cooperation is required from the Food Stamp Program. All the comments we received on this provision were supportive. We are adopting this provision as final.

We proposed that if a State agency exercises its option to permit the disqualification of an individual who refuses to cooperate without good cause, the option must be included in its State Plan of Operation. We received no comments on this provision. We are adopting this provision as final at 7 CFR 272.2.

We proposed that prior to making a final determination of good cause for refusing to cooperate, the State agency would afford the State Child Support Agency the opportunity to review and comment on the findings and the basis of the proposed determination and consider any recommendation from the State Child Support Agency. We received no comments on this proposal. However, we have since been advised that it may not be the State Child Support Agency that defines and determines good cause. It could be the TANF agency. Accordingly, we are modifying the language at 7 CFR 273.11(o) to specify that the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings.

We proposed that the State agency will not deny, delay or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish corroborative evidence and information. We received several comments suggesting that we clarify that the 30-day processing standards still apply pending this determination. We agree with these comments and are, therefore, modifying this provision accordingly at 7 CFR 273.11(p).

Noncustodial Parent—7 CFR 273.11(p)

Section 822 of PRWORA also amended section 6 of the Act by adding subsection (m) to give State agencies the option to disqualify the non-custodial parent who refuses to cooperate with the State Child Support Agency in establishing the paternity of a child and providing support for the child.

We proposed to adopt DHHS' definition of cooperation. We also proposed that the State agency make the determination as to whether or not the individual is refusing to cooperate with the State Child Support Agency. We proposed that refusal to cooperate occurs if: (1) The non-custodial parent refuses to appear for an interview; (2) refuses to furnish requested documentation; (3) refuses DNA testing; or (4) fails to make payments to the State Child Support Agency.

One commenter argued that pursuant to section 454(29)(A) of the Social Security Act (42 U.S.C. 654(29)(A)), as amended by section 5548 of Pub. L. 105–33, the State Child Support Agency ''shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied or is receiving assistance under * * * the Food Stamp Program is cooperating in good faith * * *.'' This same commenter pointed out that this provision conflicts with section 6(l)(2) of the Food Stamp Act, 7 U.S.C. 2015(l)(2), which was added to the Act by section 822 of PRWORA which provides that the Secretary of Agriculture must, in consultation with the Secretary of Health and Human Services, '' * * * develop guidelines on what constitutes a refusal to cooperate * * * and that the '' * * * State agency shall develop procedures, using guidelines developed under (the preceding provision), for determining whether an individual is refusing to cooperate.'' Based on these two statutory provisions, this same commenter suggested that the State Child Support Agency make the determination of non-cooperation and that the food stamp State agency make the determination as to whether or not the non-cooperation constitutes a refusal to cooperate. We agree that this clear delineation of responsibilities better serves the program. Therefore, we

are modifying the regulations at 7 CFR 273.11(p) to provide that if the State agency implements this option, it must refer non-custodial parents of a child under the age of 18 to the State Child Support Agency. If the State Child Support Agency determines that the individual is not cooperating in good faith, it must notify the State agency of this determination and the basis of its determination. The State agency must then determine whether this non-cooperation constitutes a refusal to cooperate.

Based on this modification, we have determined that there is no need to define in the regulations what constitutes cooperation, only what constitutes refusal. We received several comments suggesting we clarify that the non-custodial parent can only be disqualified for refusing to cooperate, as opposed to failing or being unable to cooperate. Therefore, we have decided to modify the regulations at 7 CFR 273.11(p) by deleting the definition of cooperation, and replacing it with a definition of refusal. The State agency must determine that an individual's non-cooperation with the State Child Support Agency is a refusal to cooperate if the individual demonstrates an unwillingness to cooperate as opposed to an inability to cooperate.

We proposed that the individual and not the entire household would be ineligible to participate in the Program. The comments we received were supportive. We adopting it as final at 7 CFR 273.11(p).

We proposed that the State agency count all of the disqualified individual's resources as available to the household, but that it may choose to count all or all but a pro rata share of the ineligible member's income as available to the household. The majority of the comments we received opposed this proposal as being potentially too punitive to the non-custodial parent's household. They suggested that we require the State agency to count all but a pro rata share of the income as available to the household. We agree with these comments. We are modifying the regulations at 7 CFR 273.11(p) and 7 CFR 273.11(c)(2) accordingly.

We proposed that the disqualification period be over as soon as it is determined that the individual is cooperating with the State Child Support Agency. The State agency must have procedures in place to re-qualify an individual once cooperation has been established. We solicited comments on those systems already in use. We received none. We are adopting this provision as final at 7 CFR 273.11(p).

Section 6(l) of the Act prohibits the payment of a fee or other cost for services provided under a Part D, Title IV, Child Support Enforcement Program. In addition, section 654(6) of the Social Security Act prohibits the State Child Support Agency from charging application fees for furnishing such services if cooperation is required from the Food Stamp Program. We proposed to prohibit the charging of such fees or costs. The comments we received on this provision were supportive. We are adopting this provision as final at 7 CFR 273.11(p)

Section 6 of the Act, as amended by section 822 of PRWORA also requires the State agency to provide safeguards to restrict the use of information collected by the State agency to purposes for which the information is collected. We proposed the State agency should have flexibility to establish the specific safeguards. We received no comments on this provision. Accordingly, we are adopting it as final at 7 CFR 273.11(p).

We proposed that if a State agency opts to disqualify the non-custodial parent who refuses to cooperate, it include this policy in its State Plan of Operation. In addition, we proposed to add a new section 7 CFR 272.2(d)(1)(xiv) to require that the States that elect to implement this provision include these safeguards in their Plan of Operation. We received no comments on these proposals. We are adopting them as final at 273.2(d)(xiii).

Disqualification for Child Support Arrears—7 CFR 273.11(q)

Section 823 of PRWORA amended section 6 of the Act by adding subsection (n) (7 U.S.C. 2015(n)) to give State agencies the option to disqualify a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of the individual's child. The provision also specifies that if a court is allowing the individual to delay payment or the individual is complying with a payment plan approved by a court or the State Child Support Agency, the individual will not be disqualified. We proposed that the disqualification apply to the offending individual and not the entire household.

We proposed that for any month for which it later discovers that the individual was delinquent and should have been disqualified, the State agency must establish a claim against the household. We received several comments on this provision, both for and against this procedure. Several commenters opposed the provision in general because it was too punitive and further hampered individuals' ability to become self-sufficient and productive. Several commenters opposed it because it was too administratively burdensome. Several commenters suggest that the State agency be allowed to disqualify the individual the month after the month it learns that the individual has been delinquent in child support payments. Others suggested that State agencies be allowed to establish a grace period of several months. For example, if an individual has not paid child support after four months, the individual should be disqualified until the individual starts to comply. One commenter said that since this is not a reportable change, we have no authority to set up a claim. Several commenters supported our proposal as the only way to remain faithful to the statute. The statute provides that a State agency may disqualify an individual ''* * * during any month the individual is delinquent in any payment * * * '' and, therefore, we have no option but to set up a claim. Our analysis has determined that we have no discretion to permit the State agencies to implement the provision any other way than the way we proposed. The law is very clear that the individual is to be disqualified the month that he is delinquent. Therefore, we are adopting the provision as proposed at 7 CFR 273.11(q).

A few commenters suggested that we provide a good cause exception for this provision. One commenter suggested that this provision should only apply when an individual refuses to pay as opposed to being unable to pay. The Statute does provide exceptions to this provision: (1) If the court is allowing the individual to delay payment, or (2) the individual is complying with a payment plan approved by a court or the State Child Support Agency. However, since this is a State agency option, we have decided to give State agencies the option to identify additional good cause exemptions. We are adopting the provision at 7 CFR 273.11(q) accordingly.

One commenter suggested that this provision only apply to non-custodial parents. We believe that there are situations in which a custodial parent is still obligated to pay child support. For example, the parents are separated, and the non-custodial parent is required to pay child support. During the separation, the non-custodial parent does not comply with the support order for one reason or another. Even if the parents reunite, the former non-custodial parent is still obligated to pay for the period of time the parents were separated. However, we also recognize that some State agencies might view this

as too punitive. Therefore, since this is a State agency option, we have decided to give State agencies the option to apply this provision to custodial or non-custodial parents.

We proposed that the State agency consider all of the disqualified individuals' resources, and at State agency option, either all or all but a pro rata share of the income as available to the household. All of the comments we received opposed this proposal as being too punitive to the household. Many of the commenters argued that if the State agency chose to count all of the income, the children in the household would suffer. We agree with these comments. Therefore, in this final rule at 7 CFR 237.11(q) and 7 CFR 273.11(c)(2) we are providing that if a State chooses this option, it must count all of the individuals' resources and all but a pro rata share of the income as available to the household.

We proposed that the State agency must disqualify the individual and not the whole household. All the comments we received on this provision were supportive. We are adopting the provision as proposed at 7 CFR 273.11(q).

7 CFR 273.16—Disqualification for Intentional Program Violation

The current regulations at 7 CFR 273.16 outline the procedures involved with Intentional Program Violations (IPVs) and IPV-related disqualifications. The proposed rule contained extensive revisions to this section of the regulations. These changes included the increased and additional IPV-related disqualification penalties brought about by sections 813, 814 and 820 of PRWORA. In addition, the proposed rule contained a change necessitated by a judicial decision on the imposition of disqualification periods. Clarification was also being provided in the proposed rule for a number of issues, including the definition of an IPV. Lastly, as part of an effort to streamline the regulatory requirements and to increase State agency flexibility in the area, the Department proposed to remove prescriptive language and some requirements in many discretionary areas concerning IPVs and the IPV disqualification process.

IPV Procedures and Rights of Individuals

With respect to this streamlining effort, the Department received numerous comments expressing concern about removing much of this prescriptive language. By doing so, according to the commenters, we are also omitting a number of protections necessary for ensuring fairness and due process for individuals facing the possibility of disqualification or criminal prosecution. The Department has found many of these arguments compelling. Although the Department believes the original goals of streamlining and increased State flexibility were worthy of the effort and may be revisited at some later date, we do not think such changes should come at the possible expense of the elimination of individuals' rights. Therefore, unless specifically addressed below, we are restoring in this final rule the language of the existing regulations as it pertained to discretionary areas concerning IPVs and the IPV disqualification process. Included in the restored language are such provisions as the Administrative Disqualification Hearing (ADH) and court referral process, notice requirements, waiver and consent forms, ADH decision format, and local level hearings. Finally, one commenter expressed concern that a significant number of innocent people, lacking adequate representation, are intimidated into signing ADH waivers. The commenter suggests that individuals may be threatened with criminal prosecution though the evidence against the individual is far from convincing. The Department in this preamble would like to clarify its position with respect to the use of false and/or misleading statements to obtain ADH waivers. While the Department believes strongly that those found guilty of IPVs should be removed from participation in the FSP, we would emphasize that the purpose of the FSP is to provide assistance to those in need. The use of investigative techniques that may lead to the disqualification of innocent participants is inconsistent with the intended purpose of the FSP. To this purpose, the current regulations provide for certain safeguards against intimidation, including a two-party review to ensure that evidence against an individual is sufficiently clear to merit an ADH before an ADH waiver is offered. The ADH waiver should not be used as a shortcut to the investigative process, but should only be offered after the investigation has yielded evidence adequate to bring before an ADH hearing official. Though the Department believes that no modification of the current regulations is necessary, we would emphasize our desire that these safeguards be observed.

Administrative Versus Criminal Pursuit—7 CFR 273.16(a)(1) and (e)(3)(iii)(H)

The Department received two comments in support of and four in opposition to our clarification that both an administrative disqualification hearing (ADH) and a criminal prosecution may be initiated simultaneously for the same offense. One of the opposing comments suggested that permitting simultaneous proceedings placed an enormous burden on individuals or their legal representatives to provide adequate representation in two separate proceedings. As a matter of fairness and to ensure that each individual has an appropriate opportunity to provide an adequate defense, the Department agrees with this argument and is clarifying in this final rule that both an ADH and a civil or criminal proceeding may be initiated by the State but not simultaneously. Further, the initiation of a civil or criminal proceeding is permitted regardless of the outcome of the ADH. This is not a change from our current policy as reflected in § 273.16(a) of this final rule.

Definition of an IPV—7 CFR 273.16(c)

The Department proposed updating this definition to provide a clarification on trafficking as well as to account for the improper acquisition and use of electronic benefit transfer (EBT) cards. One commenter suggested that we make the definition more consistent with section 6(b)(1) of the Act (7 U.S.C. 2035(b)(1)) by replacing ''*relating to* the use, presentation'' as it appears in the current regulations with ''*for the purpose of* using, presenting'' as it appears in the Act. We agree that this wording better reflects the appropriate intent and is reflected in Section 273.16(c) in this final rule.

PRWORA Section 813—Doubled Penalties for Violating FSP Rules

The proposed rule contained the provision in section 813 of PRWORA that increases the penalties twofold for the non-permanent offenses. Specifically, unless the offense falls under a specific category requiring a more stringent penalty, section 6(b)(1) of the Act (7 U.S.C. 2015(b)(1)) now requires that an individual be disqualified for one year for a first finding of IPV, and for two years for a second finding of IPV. The penalty for a third finding of IPV, permanent disqualification, remains the same. For convictions involving the trading of controlled substances for coupons, section 813 of PRWORA requires that an individual be disqualified for two years for the first offense.

The comments received by the Department concerning the doubling of the current disqualification penalties expressed general support. Since the

Department is retaining the structure of the current rule, these changes will be reflected in § 273.16(b) of the final rule.

PRWORA Section 814—Disqualification of Individuals Convicted of Trafficking $500 or More

The proposed rule included the provision in section 814 of PRWORA that permanently disqualifies individuals from FSP participation if they are convicted of a trafficking offense of $500 or more.

The statutory language provides for this penalty to take effect where there is an actual *conviction.* The proposed rule extended the applicability of this penalty to include signed disqualification consent agreements in connection with deferred adjudications. The Department received two comments objecting to this extension of penalties. Specifically, the commenters believed that since there is no actual determination of guilt, there is no actual conviction as required by section 6(b) of the amended Act. This is a valid point. Therefore, the final rule adds language to permanently disqualify individuals from FSP participation if they are convicted of a trafficking offense of $500 or more. The proposed language specifying that this penalty also applies to deferred adjudications does not appear in the final rule.

This change does not affect our current long-standing policy in 7 CFR 273.16(b)(9) that allows the penalties associated with trading coupons for firearms, ammunition, explosives or controlled substances to be imposed using agreements obtained in deferred adjudications. The basis for the difference between this policy and the new trafficking penalty is the different respective requirements in the Act. As discussed above, Section 6(b)(1)(iii)(IV) of the Act (7 U.S.C. 2025 (b)(1)(iii)(IV)) requires a *conviction* for the new PRWORA trafficking penalty. Conversely, the existing firearms, ammunition, explosives and controlled substances penalties requires only a court *finding* (rather than a conviction) (7 U.S.C. 2025 (b)(1)). Therefore, the current policy regarding these long-standing penalties remain unchanged.

A number of comments were received regarding the $500 trafficking benchmark associated with this penalty. The preamble to the proposed rule (64 FR 70933) specified that, if the cumulative amount of the related infractions making up the IPV is greater than $500, then the individual would be subject to the increased trafficking penalty. Three of the comments were from State agencies expressing that it would be difficult to track dollar amounts of individual convictions. This is not our intention. Aggregating involves the accumulation of dollar amounts for separate but related trafficking *offenses* leading up to the prosecution of a *single IPV.* All evidence necessary for the prosecution of a case, regardless of the number of offenses, should include the dollar amounts for each. It should then be relatively simple to aggregate these amounts to determine whether the total reaches the $500 benchmark for permanent disqualification. Comparing or aggregating individual conviction amounts are not necessary (or even appropriate) in these instances.

The Department also received one comment indicating that the aggregating of the dollar amounts of individual trafficking offenses to reach the threshold of $500 is unfair to affected individuals and households. The commenter suggested that Congress intended to severely punish the more serious offenders while allowing the lesser offenders to learn from their mistakes. Therefore, according to the commenter, individual trafficking incidents should not be combined. While the Department does not disagree with the suggested intent, we believe that the trafficking of $500 or more, whether in an single transaction or in aggregate, is a serious offense and is deserving of the more serious penalty. Further, permanent disqualification is applicable, as clarified above, in such cases only when referred to the court and a conviction is obtained. The final determination will thus belong to the court. The Department would also like to point out that those individuals that receive less than $500 per month in food stamp benefits would have to participate in multiple intentional violations to reach the $500 benchmark for permanent disqualification. Without aggregating, these same individuals, though they be chronic serious offenders, would never be subject to the penalty intended by Congress. Conversely, without aggregating, the Department would be in the position of unfairly holding only those that receive $500 or more per month in food stamp benefits potentially liable for the more severe penalty. However, even this latter group could avoid ever receiving a permanent disqualification by intentionally limiting trafficking transactions to $499 or less. The Department does not believe that this is what Congress intended and the requirement concerning aggregating will be retained in the final rule.

PRWORA Section 820—Ten Year Disqualification for Multiple Participation

The proposed rule included the provision in section 820 of PRWORA which amended section 6 of the Act by adding paragraph (j), 7 U.S.C. 2015 (j), to provided for a ten year disqualification for making a fraudulent statement or misrepresentation in order to receive multiple benefits simultaneously duplicate participation.

Two of the commenters expressed general support for this provision and for the criteria used in determining duplicate participation. Two additional commenters suggested that there must be a dollar loss before duplicate participation is considered to have occurred. The Department disagrees. The amendment made by section 120 applies by its terms to fraudulent statements or representations with respect to identity or place of residence in order to receive multiple benefits simultaneously. It is not specified that such statements or representations must be successful in order for the 10-year disqualification to apply. As long as there is sufficient evidence that the individual made such statements or representations, it is not necessary to establish a dollar loss. Unsuccessful attempts to commit fraud through duplicate participation should be dealt with in the same manner as successful attempts. To do otherwise would undermine the integrity of the Program. The final rule at § 273.16(b)(5) remains unchanged.

Finally, one respondent asked for clarification on whether continuing to receive benefits in one State after moving to a second constitutes duplicate participation. If so, which State should pursue the IPV and establish the claim: the State the individual moved from or the State the individual moved to. In such cases, the State where the individual resides should initiate the IPV investigation and establish the claim.

Applicability of PRWORA Disqualification Penalties

The proposed rule discussed whether these new PRWORA IPV disqualification penalties should be applied to all ADHs, court hearings, and similar proceedings held subsequent to enactment of the law (regardless of when the actual offense occurred) or only to those cases in which the actual offense occurred subsequent to State agency implementation of the new legislation. PRWORA set the date of enactment, August 22, 1996, as the effective date for these provisions of the

law. As a result, State agencies were permitted discretion as to whether the new or increased penalties should apply to offenses that occurred prior to State agency implementation of the new legislation. It was, therefore, impractical in the proposed rule for the Department to introduce standards on an issue for which action has already been taken.

The Department received two comments stating that offenses occurring prior to the date of enactment (August 22, 1996) should not trigger the new penalties. While we understand the commenters' position, the Department still believes that retroactively imposing new standards for an action that has already been taken would be an inappropriate burden to place on States. The final rule remains unchanged.

Another respondent asked the Department to specify which penalties apply when the offense occurs prior to August 22, 1996. Again, since State agencies have already used their discretion in implementing this provision, this will remain a State option and will not be regulated by the Department. We would add, however, that we expect that the penalties a State has decided to use in this circumstance, will be applied in all such cases.

Two respondents suggested that a second offense for the trafficking of a controlled substance that occurs after August 22, 1996 (the date of enactment of PRWORA) when the first offense occurred prior to that date should not trigger a permanent disqualification. While PRWORA required the doubling of the first offense for the trafficking of a controlled substance, the permanent disqualification for a second such offense existed prior to PRWORA. This provision was part of Section 13942 of the Mickey Leland Childhood Hunger Relief Act (Pub. L. 103–66). The Department already implemented this non-discretionary provision in regulations published on August 22, 1995 (60 FR 43513) and this provision is not changed in this final rule.

Imposition of Disqualification Penalties—7 CFR 273.16(a), (e), (f), (g) and (h)

In response to a lawsuit (*Garcia v. Concannon and Espy,* 67 F. 3d 256 (1995)), the Department proposed to require State agencies to impose a disqualification period for all IPV-related disqualifications as soon as administratively possible, regardless of eligibility. We received four comments supporting this change of policy. One commenter, however, believed that this change was too burdensome to implement since those that are no longer on the Program now need to have their disqualification periods tracked. We disagree. This policy adds no new requirements for State agencies, it actually eliminates one. State agencies have always been required to impose disqualifications immediately when the individual being disqualified remained otherwise eligible to participate in the Program. That will not change with this policy except that State agencies will no longer need to track pending disqualifications until the individual reapplies and is found eligible for benefits. The final rule retains the proposed provision. (See § 273.16(b)(13).)

ADH Timeframes

The current regulations at 7 CFR 273.16(e)(2) require that the State agency reach a decision and inform the individual within 90 days of the date the hearing is scheduled. The proposed rule required that the individual be notified within 180 days after the date of discovery of the suspected violation or within 60 days of the date of the hearing, whichever is sooner.

The Department received 12 comments opposing at least one aspect of this change. Most commenters thought 180 days was too short a period to properly develop evidence, build a case, hold the hearing and arrive at a decision. The commenters suggested retaining the current requirement of 90 days from the date of the initial notification to the individual. Given the general disagreement with the Department's proposal and support for retention of the current standard, we have decided to retain the existing 90-day standard as required in the current rule.

Local-Level ADHs

The proposed rule made clear our long-standing policy that either the affected individual or local agency must be given the opportunity to seek some form of an appellate review of a local-level decision. The Department received one comment disagreeing with this position. The commenter believed that State agencies should not be allowed to hold a second hearing on the same charge when the individual has already been ''cleared.'' We disagree. The Department believes that there are instances in which a State appeal would be appropriate. We also believe that State agencies will not abuse this authority and only reserve these appeals for those instances in which policy is clearly misapplied. The current language in the existing regulations is retained without change.

Reporting Requirements—7 CFR 273.16(i)

The Department received one comment seeking clarification whether the Department's reporting system for disqualifications, DRS, would accept the new IPV disqualification penalties. DRS will currently accept a disqualification penalty of any length. The system does contain edits that alert the user when a non-standard penalty has been submitted, but this in no way prevents the system from accepting the disqualification record. The penalty for duplicate participation and the more severe penalties for trafficking will also trigger an alert. FNS is currently exploring ways to avoid this latter circumstance. State agencies should contact their FNS regional DRS Coordinator if they need further assistance.

7 CFR 273.24—Time Limit for Able-Bodied Adults Without Dependents (ABAWDs)

Section 824 of PRWORA amended section 6 of the Act by adding a new subsection (o) 7 U.S.C. 2015(o) that limits the receipt of food stamps for certain able-bodied adults to three months in a three-year period unless the individual is working 20 hours per week or participating in a work program 20 hours per week, or is participating in a workfare program. Individuals can regain eligibility, and may receive an additional three months of food stamps while not working in certain circumstances. Amended section 6(o) includes some exceptions, and receiving food stamps while exempt does not count towards an individual's time limit. In recognition that it may be difficult for individuals to find work in depressed labor markets, the statute authorizes waivers for individuals in areas in which the unemployment rate is above ten percent, or where there is a lack of sufficient jobs.

We proposed to codify the time limit for ABAWDs at 7 CFR 273.25. However, on Friday, September 3, 1999, we published an interim final rule called The Food Stamp Provisions of the Balanced Budget Act of 1997. This rule implemented the changes to the Food Stamp Act brought about by the Balanced Budget Act of 1997, which included a provision allowing the State agencies to exempt from the time limit up to 15 percent of ''covered individuals.'' This provision was codified at 7 CFR 273.24. Because these two provisions are related, we have decided to merge the two. Therefore in this final rule, we have modified 7 CFR

273.24 to include the time limit for ABAWDs.

We proposed that for purposes of this provision, 20 hours a week equals 80 hours a month. The majority of the commenters supported this proposal. A few commenters suggested that weekly earnings which equal the minimum wage times 20 should be the equivalent of working 20 hours a week. The statute refers specifically to ''working 20 hours a week.'' In addition, it provides for an exception if an individual is exempt under section 6(d)(2) of the Act. One of the exemptions under section 6(d)(2) of the Act is if an individual's weekly earnings equal 30 times the minimum wage. We believe if Congress intended for 20 times the minimum wage to count as meeting the work requirement it would have specified so in the Act and not have referenced the section 6(d)(2) exemption. Therefore, we are not adopting the commenters' suggestion.

We proposed that for purposes of this provision unpaid work under standards established by the State agency, and work for in-kind services count as work. The majority of the commenters supported this proposal. Only one commenter opposed the provision as not consistent with the goal of self-sufficiency. Several commenters suggested that unpaid work be classified as comparable workfare so it would include worker protections and hour limitations. One commenter elaborated further saying this suggestion is consistent with congressional intent that persons working for no compensation other than the opportunity to receive food stamps should not be required to work more hours than the minimum wage divided into those benefits. Also, limiting the hours any individual recipient must volunteer would allow non-profits to create slots for more recipients. While we agree that individuals working for no compensation should not have to work more than their food stamp allotment divided by the minimum wage, we do not have the discretion to *require* State agencies to create a comparable workfare program in accordance with § 273.7(m)(10). We do encourage all State agencies to create comparable workfare programs in order to restrict the number of hours an individual has to work in a volunteer position in order not to be subject to the time limit. However, in those situations where State agencies do not have enough workfare slots or have not created a comparable workfare program, we believe individuals should have the opportunity to fulfill the work requirement by volunteering 20 hours a week averaged monthly. We also received several comments supporting this proposal. Therefore, we are adopting the provision as written at 7 CFR 273.24.

We proposed that work include unpaid work under standards established by the State agency. Several commenters suggested that we clarify in the regulations that the State agency may only set standards for verification of work, but they may not set standards for the work itself. One commenter pointed out that we allow in-kind work to count without referencing state-set standards and that we should allow the same for unpaid work. This same commenter stressed that any individual who can demonstrate that the individual is doing 20 hours of unpaid work a week, averaged monthly, should be able to receive food stamps. While we agree, we also believe that the State agency should have some control over unpaid work. We believe it should be able to require whatever verification it wants to in order to verify unpaid work. Therefore, we are modifying the regulation to provide that work means unpaid work, verified under standards set by the State agency.

Several commenters queried how the State agencies would determine the hourly value of in-kind work. One commenter suggested the State agencies be responsible for determining the value of in-kind work. We would like to reiterate that the State agency has to verify with the employer the number of hours an individual works, no matter what currency that individual is being paid in—money, commodities, or housing. If an individual is receiving housing in exchange for being the superintendent of the apartment complex, but the individual only works at that position 10 hours a week, then that individual is not fulfilling the work requirement, unless the total of all types of work and participation in work programs meet the 20 hours per week requirement. We believe we do not have to clarify the regulations any further.

A few commenters suggested counting all work experience programs as workfare programs. We do not have the discretion to do this. Workfare and work experience programs are two distinct programs governed by different provisions in the Act. Workfare is governed by section 20 of the Act, 7 U.S.C. 2029. Work experience programs are components of the Employment and Training Program (E&T Program) governed by section 6(d)(4) of the Act, 7 U.S.C. 2015(d)(4). Section 824 of PRWORA references both separately. Section 824 added paragraph (o) to section 6 of the Act to provide that the individual must participate and comply with a work program (which encompasses an E&T Program) 20 hours a week, or a workfare program under Section 20 of the Act. It does not reference an hourly requirement in the workfare program since everyone's workfare obligation is different. Therefore, we are not adopting the commenters' suggestion.

We proposed that someone who has missed work for good cause as determined by the State agency will be considered to be satisfying the work requirement if the absence from work is temporary and the individual retains the job. The majority of the commenters supported this provision. A few opposed it as administratively time consuming and error prone and feared that it would not be uniformly applied. A few commenters suggested we include in the regulations a non-exhaustive list of what constitutes good cause. We believe the State agencies are in a better position to define good cause for purposes of this provision. However, we also believe that the good cause provision for ABAWDS fulfilling the work requirements should parallel the good cause provisions for work registration and E&T Program requirements. Therefore, we are modifying the regulations at 7 CFR 273.24 to provide that good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

A few commenters suggested that we extend this provision to workfare and employment and training (E&T). As mentioned above, the regulations at 7 CFR 273.7(i) already provide a good cause clause for work registration and E&T. We believe that putting it in the regulations at 7 CFR 273.24 would be redundant. Therefore, we are not adopting the commenter's suggestion.

We discussed in the preamble to the proposed regulation the merits of our proposal that a qualifying work program need not be an FNS E&T Program under 7 CFR 273.7(f). Section 6(o) only requires that a qualifying work program not be a job search or job search training program and that it meet standards approved by the Governor of the State. We proposed that we would not review plans for these programs, but cautioned State agencies to scrutinize these programs carefully so that they are not later determined through the quality control process to not meet the requirements of the statute. We received several comments voicing concern that this implied our quality control

reviewers would be reviewing the programs themselves to ensure that they meet standards set by the Governor. We want to clarify that as part of our oversight duties we may evaluate, through our management evaluation process, and not our quality control process, these programs to ensure that they meet the requirements of the statute.

We proposed that a qualifying work program may contain job search as a subsidiary component but that the job search activity must be less than half of the requirement. The majority of the commenters supported this proposal. One commenter opposed the proposal as being too restrictive because many E&T programs are made up of job search and job search training activities. One commenter suggested we modify the wording so the job search component be ''not more than half,'' that way the program could be 50 percent work and 50 percent job search. Section 824 of PRWORA specifically provides that participation in an E&T Program, OTHER THAN a job search or job search training program, would satisfy the work requirement. We acknowledge that prior to PRWORA the bulk of food stamp E&T Programs consisted of job search. We also acknowledge that job search and job search training are valuable aspects of the these programs. However, in amending Section 6 of the Act, Congress specifically prohibited E&T job search activities as fulfilling the work requirement. We decided to allow job search as a subsidiary component, but do not believe we have the discretion to allow it as an equal or dominant component. Therefore, we are not adopting the commenters' suggestions.

We proposed that an individual could combine work and participation in a work program to meet the 20 hours per week requirement. The majority of the commenters supported this proposal. One commenter suggested that we clarify in the regulations that time spent off-site preparing for E & T activities count towards meeting the requirements. This is up to the State agency. If the State Agency recognizes such activities for E & T purposes then the individual is fulfilling the work requirement.

We proposed that the State agencies have the option of how to measure and track the 36-month period. They may use a ''fixed'' or ''rolling'' 36-month ''clock.'' The majority of the commenters supported this proposal. A few commenters suggested that we allow State agencies to switch back and forth from fixed to rolling at any time. Several State agencies switched from a rolling period to a fixed period in December 1999, the end of the first 36-months. Several other State agencies switched once they had solved their potential ''Y2K'' computer problems. We believe that switching back and forth frequently could negatively affect recipients. However, we also believe State agencies are in the best position to determine how to measure and track this period of time and should have the flexibility to change tracking systems if they determine it is necessary. We urge State agencies to choose which method they are going to use by the implementation date of this rule. After such time, we provide in this final rule at 7 CFR 273.24 that once the implementation date of this rule has passed, State agencies must inform us if they switch tracking methods for this time period.

We proposed that partial months not count towards the 3-month time limit. The majority of the commenters supported this proposal. One commenter suggested that we clarify that prorated months will not count as opposed to not counting the month of application. Another commenter suggested we clarify the regulations by saying ''. . . after the first of the month.'' According to the regulations at 7 CFR 237.10, initial months' benefits are prorated from the date of application. This implies that, unless an individual applies on the first day of the issuance cycle, his benefits are prorated and are in effect for only part of the month, not the full month. While we believe our proposal that a countable month is one in which an individual receives a full month's benefit is clear, we will modify it to say that a countable month is one in which an individual receives a full month's benefit, and not benefits that are prorated in accordance to 7 CFR 273.10(a)(1)(ii).

We proposed that State agencies may opt to consider benefits erroneously received as having been received until they are repaid in full. Several of the commenters opposed the option of tracking benefits erroneously received as too complex. One commenter suggested that when determining the amount a client has to pay back on an overissuance, State agencies can exclude a month that was paid in error if that month was treated as a countable month for ABAWD purposes. A few commenters argued that benefits should count no matter what if they have been posted to an EBT account since the quality control system considers a case active and benefits received under this situation. One commenter suggested that State agencies be allowed to consider benefits to have been received unless or until it files a claim to recover the overissuance. The intent of this proposal was to give State agencies different options on how to treat benefits that are received in error. We believe that if an ABAWD receives benefits erroneously and then pays them back, that month should not be considered a countable month. Therefore, we are modifying the regulation to provide that State agencies must count benefits erroneously received as having been received for purposes of this provision, until the individual repays them in full.

We proposed that unreported work would ''erase'' a countable month. Only one commenter supported this proposal. The majority of the comments we received opposed it. They said it was complex, administratively burdensome and not consistent with income reporting requirements and regulations governing IPVs. One commenter said that it rewards a recipient who did not comply with the program requirement to report income. Another commenter argued that current rules state a household's benefit cannot be restored if the household fails to report the information and he questions why we should have different standards for ABAWDs. Another commenter said that as reinforcement to the reporting requirements the countable months should not be adjusted in this situation.

In light of these comments, we believe State agencies are in the best position to determine whether or not they should count an unreported job as ''work'' for purposes of this provision. We believe that if a State agency erases a countable month if it later determines the individual was in fact working in an unreported job, it will have acted within the law. However, we also realize from the comments that some State agencies would choose not to do this. Therefore, we are modifying the provision and giving State agencies the option to count unreported work as ''work'' for this provision.

We proposed at 7 CFR 273.2(f)(1)(xiv)(A) that State agencies must verify work hours for individuals subject to the time limit. Several commenters opposed mandating verification of work hours as overly prescriptive. One commenter suggested that the State agency only be required to verify that information if it is questionable. We understand that State agencies may see this requirement as burdensome. However, we believe it is necessary in order to ensure the proper implementation of a basic eligibility factor. Therefore, we are retaining this proposal as written.

We proposed at 7 CFR 273.12 that individuals be required to report if their work hours fell below 20 hours a week, averaged monthly. The majority of the commenters opposed this provision. They said it was complicated, burdensome, not family friendly, and in contrast to reporting simplification measures of the President's July 1999 Initiative. One commenter suggested that individuals be required to report if their work hours fell below 80 hours a month. We believe that in order to be faithful to the law, we must require individuals subject to the time limit to report if their hours fall below 20 hours a week averaged monthly, or as defined earlier, 80 hours a month. However, we also recognize that State agencies have different kinds of reporting systems for different types of households. We do not want to prescribe the type of reporting system a State agency must assign a potential ABAWD. However, we want to emphasize that State agencies are required to adhere to the statutory requirement of time-limited benefits for individuals who are not fulfilling the work requirement. Therefore, we are modifying the regulations to provide that individuals are required to report when their number of hours worked fall below 20 hours a week, averaged monthly (80 hours a month). Regardless of the type of reporting system the State agency assigns to potential ABAWDs, the State agency must adhere to the statutory requirements of time-limited benefits for individuals who are not fulfilling the work requirement.

We proposed at 7 CFR 273.2(f)(8) that the State agency must verify the countable months an individual has used in another State if there is an indication that the individual participated in another State. We also proposed that the State agency may accept the other State's assertion as to the number of countable months the individual has used in the other State. The majority of the comments we received opposed this provision. Commenters argued that this proposal is complex, especially since State agencies have different tracking systems for the 36-month clock. A few commenters argued that this would delay application processing. Several commenters said that until a national database exists, they should not be required to verify this information. Some commenters suggested State agencies only verify this information if questionable. Other commenters indicated that they should not rely on other States' assertions as to the number of countable months since in fair hearings and IPV challenges, State agencies must obtain copies of all relevant supportive materials. To be faithful to the statute, we believe we must require State agencies to verify the number of countable months an individual has participated in another State where there is an indication that the individual has participated in another State. Because commenters have expressed concern that this may delay the application, we are reminding State agencies at 7 CFR 273.2(f) that the normal processing standards of 7 CFR 273.2(g) apply. In addition, and in an attempt to simplify and hasten this verification process, we have decided to retain in the regulations the provision that the State may accept another State's assertion as to the number of countable months an individual has used in another State. The other State's assertion will be acceptable for quality control review purposes.

We proposed that all of the resources and all but a pro rata share of the income of the ineligible ABAWD would be counted as available to the household. We received wide variety of comments. Several commenters argued that this proposal was too harsh, especially in light of the fact the ineligible ABAWD would not have much money or resources anyway. They suggested that none of the income and none of the resources be considered as available to the household. Other commenters said this was too lenient, and that the State agency should count all of the income and resources as available to the household. Other commenters suggested that this should be a State agency option. Since this is a mandatory provision, we do not believe we may give the State agency an option as to how to treat the income and resources of the ineligible ABAWD, especially since we are now mandating how the State agency treat it for individuals ineligible under optional provisions, such as comparable disqualification, cooperation with child support agencies, and disqualification for child support arrears. In addition, we do not believe we should be punitive and require the State agencies to count all of the income and resources of the individual since he has failed to meet his responsibilities. Finally, we do not believe we should require the State agency to ignore the income and resources of these individuals, given that they have not ''complied'' with a food stamp eligibility requirement. Therefore, we have decided to retain the language as written at 7 CFR 273.24 and 7 CFR 273.(11)(c)(2) and provide that the State agency must count all of the resources and all but a pro rata share of the income as available to the household. We believe this is the most equitable treatment.

Exemptions

We proposed in accordance with the section 6(o)(3)(A) of the Act, that an individual is exempt from this requirement if he is under 18 or older than 50 years of age. A few commenters suggested we clarify that an individual becomes exempt on his or her 50th birthday, in accordance with current policy. We agree with this comment. Therefore we are clarifying in the regulations that an individual is exempt if he is under 18 or 50 years or older.

We proposed that an individual is medically certified as physically or mentally unfit for employment if he provides a statement from a physician or a licensed or certified psychologist that he is physically or mentally unfit for employment. Several commenters supported our proposal of not requiring individuals to meet a more stringent definition of ''disability.'' However, the majority of the commenters suggested that we let the eligibility worker certify the individual as physically or mentally unfit if the unfitness is obvious. A few commenters argued that it is too difficult and expensive for individuals to get a statement from a physician or a licensed or certified psychologist and that we allow a statement from a nurse, a nurse practitioner, or a designated staff member of the doctor's office to suffice. Several commenters suggested that we do away with this provision and rely solely on the regulations at 7 CFR 273.7(b). As explained in the preamble, we incorporated the ''unfit for employment'' exemption from 7 CFR 273.7(b) into the ABAWD provision except, in accordance with the statute, we required that for purposes of this provision, the medical certification be mandatory in all cases. However, our comment analysis has led us to believe that that this level of verification is not necessary. Therefore, we have decided to require a medical certification only in cases where the unfitness is not evident to the eligibility worker. In addition, we have decided that a statement from a nurse, nurse practitioner, designated representative at a doctor's office, social worker, or other medical personnel the State agency deems appropriate would suffice as a medical certification. We are modifying the regulations at 7 CFR 273.24 accordingly.

We proposed that an individual is exempt if the individual is a parent (natural, adoptive, or step) of a household member under the age of 18, or is living in a household where a member is under the age of 18. The majority of the commenters supported

this proposal. A few commenters opposed the proposal as defeating the purpose of welfare reform. A couple of commenters suggested that only one parent should be exempt, not both, and that all the other adults in the house should work. A few commenters suggested that we clarify that even if the individual who is under 18 is not eligible for food stamps, the individual's presence in the house exempts those adults who are living in the household. As discussed in the preamble to the proposed rule, we believe it is administratively burdensome, and in this day and age virtually impossible, for the State agency to determine who is ''responsible'' for a dependent child. We believe that in many cases, more than one adult has responsibility for a dependent child. Therefore, we are retaining the provision as written. However, we are clarifying in the regulations that even if the household member who is under 18 is not eligible for food stamps, the other individuals in the household are still exempt from the time limit.

All the other comments concerning the proposals on the exemptions were supportive. Therefore, we are retaining them as written.

Regaining Eligibility

We proposed that an individual can regain eligibility if the individual works 80 hours in a 30-day period. For purposes of this provision, we proposed that a 30-day period be any 30 consecutive days. We received only a few comments on this proposal. One commenter opposed this provision and suggested that the 30-day period immediately precede application. One commenter suggested we clarify in the regulations that the 30-day period need not immediately precede application. One commenter suggested that we modify the language so that an individual can regain eligibility if the individual works 80 hours in a calendar month. Our proposal basically mirrored the language of the law which provides that individuals can regain eligibility if they work 80 hours during a 30-day period. As discussed in the proposed rule, the statute does not require that the 30-day period be a calendar month, nor does it require that the 30-day period immediately precede the date of application. Therefore, in order to afford flexibility and be faithful to the statute, we are retaining the proposal as written.

We proposed that the State agency have the option to prorate benefits from the date the ''cure'' is complete or back to the date of application for individuals that complete the cure by working or participating in a work program. One commenter said that it is burdensome to keep the application open and pending until an applicant completes the cure. Two commenters suggested that we allow State agencies to determine eligibility prospectively. For example, if an individual applies and has a job lined up to start the next week, which guarantees him the number of hours necessary to regain eligibility, the State agency should be allowed to determine that he has completed the cure. We agree with these comments. Therefore, we are modifying the regulations to provide that the State agency also has the option to determine eligibility for ABAWD purposes prospectively.

We proposed in the preamble that there be no limit to the number of times an individual could regain eligibility by working 80 hours in a 30-day period. Two commenters supported this proposal as written. One of these commenters suggested we codify this in the regulations. One commenter said that this proposal is too burdensome to track. This same commenter suggested that once an individual has regained eligibility, the individual should be eligible at any time he is meeting the work requirement. The individual should not have to work another 80 hours to regain eligibility. We recognize the complexity of this provision. However, we believe that the proper reading of the law requires that an individual who has lost eligibility must regain it by working 80 hours in a 30-day period. We agree that this needs to be codified in the regulations. Therefore, we are modifying the regulations at 7 CFR 273.24 to provide that there is no limit on the number of times an individual may regain and then maintain eligibility by fulfilling the work requirement.

We proposed that the window of eligibility for the second three-month period start on the day the State agency learns that an individual has lost his job. Several commenters argued that this is very difficult to administer, especially if someone notifies the State agency in the middle of the month. These commenters suggested that the window of eligibility start the month after the month in which the individual notifies the State agency that he has lost his job. The regulations already provide for this. According to the regulations at 7 CFR 273.10, benefits are prorated back to the date of application. In addition, according to the regulations at the newly designated §273.24, partial months are not countable months for ABAWD purposes. The individual would be entitled to benefits back to the date of application, but the first or partial month would not count for ABAWD purposes. The individual would still be entitled to three full consecutive countable months. We believe the regulations at 7 CFR 273.24(e) are clear when they state, ''An individual * * * is eligible for three consecutive countable months (as defined in paragraph (b) of this section). * * *), emphasis added. Therefore, we are retaining the provision as written.

One commenter asked us to clarify if the ''window of opportunity'' opens whether or not an individual applies for benefits and if the State agency must take action if an individual does not apply for benefits. We believe in most cases, the State agency will be dealing with either current recipients or initial applicants. If an individual is a current food stamp recipient, the individual will notify the State agency in accordance with reporting requirements that the individual has lost his job and the window of eligibility starts then. Or, if the individual is a workfare participant, the State agency will become aware that the individual is no longer participating. However, if an individual is not a recipient, the individual probably will not notify the State agency that he has lost his job until he applies for benefits. At such time, the State agency must take action on the case. We believe it is very rare that a State agency is notified by a former recipient, or becomes aware that a former recipient is no longer employed, except at the time the former recipient is reapplying for benefits.

Several commenters disagreed with our proposal that when an individual ''forfeits'' the opportunity to use the three consecutive countable months (for example, due to a voluntary quit sanction), the individual may work another 80 hours in a 30-day period and regain eligibility again for the three consecutive countable months. These commenters argued that this is confusing and difficult to administer since the State agency does not track individuals' ''window of eligibility.'' One commenter suggested that if an individual is not eligible for the three consecutive countable months because of a sanction, the individual may not regain eligibility for another three month period. One commenter suggested we include language that limits eligibility for the additional three months to those who lose a job or placement through no fault of their own, thus eliminating the confusion that would result from trying to reconcile the relationship between the voluntary quit sanction period and the additional three months of eligibility. Another commenter suggested that if the individuals were ineligible to receive

benefits during those three months, they may ''bank'' the three months and then reapply for them once their sanction is over and not have to work 80 hours in a 30-day period again. We understand the tracking difficulties this provision implies. At the same time, we cannot ignore the fact that if an individual is under a sanction during the period the individual is eligible for benefits the three consecutive months, the individual does not ''receive'' food stamps. The language of the law states clearly that an ''individual shall not receive benefits pursuant to clause (i) for more than a single 3-month period in any 36-month period.'' In addition, the law provides that if an individual loses eligibility the individual must regain it by working 80 hours in a 30-day period. If an individual does not ''receive'' the benefits for which the individual is eligible due to a sanction, the individual may regain eligibility and ''receive'' them in the future. We do not believe we have the discretion to limit this provision as suggested by the commenters. Therefore, we are retaining the provision as written.

One commenter suggested that we clarify that anyone who has lost eligibility can requalify, not just individuals who are denied benefits. We agree with this comment and are modifying the regulations to provide that an individual denied eligibility under paragraph (b) of this section, or who does not reapply for benefits because the individual is not meeting the work requirements of 7 CFR 273.7, can regain eligibility.

This same commenter suggested we clarify in the regulations that an individual can re-qualify by becoming exempt. We believe the regulations are clear that if a person meets one of the exemption criteria the person is exempt, and does not have to fulfill the work requirement, including regaining eligibility. However, we have modified the regulations at 7 CFR 273.24 to provide that an individual can requalify by becoming exempt.

Waivers

Section 824 of PRWORA amended section 6(o)(4) of the Act to allow the Secretary, at the request of a State agency, to waive the time limit for any group of individuals if the Secretary determines that the area in which the individuals reside has an unemployment rate of over ten percent, or ''does not have a sufficient number of jobs to provide employment for the individuals.''

On December 3, 1996, we published guidance which contained basic procedures for applying for a waiver, identified data sources which could be used to substantiate requests, and described some approaches that could support a request based on ''lack of sufficient jobs.'' Because the guidance was extensive and detailed we proposed not to include it in the regulations. Instead, we proposed a general framework for waiver requests with the understanding that State agencies could submit requests with no limit on the supporting documentation, and every request would be weighed on its own individual merits. We received several comments suggesting we include all or some of the guidance in the regulations. Commenters argued that unless the guidance is incorporated into the regulations, a subsequent administration could abolish it without public comment. Based on these comments, we have decided to incorporate some of the more pertinent aspects of the guidance into the regulation. More specifically, we have modified the regulations at 7 CFR 273.24(f) to include a non-exhaustive list of the kinds of information a State agency may submit to support a claim of 10 percent unemployment or ''lack of sufficient jobs.'' For example, a State agency could provide evidence that an area has 10 percent unemployment if it has: (1) A recent 12 month average unemployment rate over 10 percent which indicates a period of sustained high unemployment rates; (2) a recent three month average unemployment rate over 10 percent which indicates an early signal of a labor market with high unemployment; or (3) an historical seasonal unemployment rate of over 10 percent. States may submit evidence of a lack of sufficient jobs by submitting data that the area: (1) Was designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration (ETA); (2) was determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; (3) has a low and declining employment-to-population ratio; (4) has a lack of jobs in declining occupations or industries; or (5) has a 24 month average unemployment rate 20 percent above the national average for the same period.

To facilitate the waiver process, we have decided to incorporate into the regulations a paragraph describing three types of waiver requests we currently approve and will continue to approve based on clear quantitative standards. Specifically, we provide that we will approve a waiver if a State agency submits and we confirm (1) data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent; (2) data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20 percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year; or (3) evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year.

We proposed that States seeking waivers for areas with unemployment rates higher than 10 percent be required to submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. We also proposed that, to the extent that a ''lack of sufficient jobs'' waiver is based on labor force and unemployment data, States be required to submit data that relies on standard BLS data or methods. Several commenters opposed the mandate that State agencies be restricted to this data. One commenter pointed out that some states have already obtained waivers based on adverse employment-to-population ratios using BLS employment data and Census Bureau population estimates, or academic studies showing particularly severe employment barriers. We should weigh these requests on their own merits and not dismiss them out of hand. Other commenters suggested we consider data from the Bureau of Indian Affairs.

As discussed in the preamble, established Federal policy requires Federal executive branch agencies to use the most recent National, State or local labor force and unemployment data from the BLS for all program purposes. This policy is contained in Statistical Policy Directive No. 11, issued by the Office of Federal Statistical Policy Standards, Office of Management and Budget. This policy ensures the standardization of collection methods and the accuracy of data used to administer Federal programs. Therefore, we have no choice but to require State agencies that are submitting requests based on unemployment rates to submit the most recent data acquired from BLS or its cooperating agency in the State. This includes requests under the ''lack of sufficient jobs'' criteria which are using unemployment data as supporting evidence (e.g. low or declining employment-to-population ratios, or unemployment 20 percent above the national average for more than two years). As discussed above, this does not preclude any State agency from submitting other data to prove ''lack of sufficient jobs'' such as an academic

study, designation of Labor Surplus Areas status, or data from the Bureau of Indian Affairs. Therefore, we are retaining the requirement as written.

We proposed that in areas for which the State certifies that data from BLS show an unemployment rate above 10 percent, the State may begin to operate the waiver at the time the waiver request is submitted, and that we would contact the State if the waiver needed to be modified. One commenter suggested that, in addition, we allow immediate implementation of waivers for areas where the Employment and Training Administration, U.S. Department of Labor (ETA), has designated such areas as Labor Surplus Areas (LSA), since our current policy defers to these designations in granting waivers. We agree with this comment. We are modifying the regulations at 7 CFR 273.24 accordingly.

We proposed that waivers would not be approved for more than one year. One commenter suggested we clarify that yearlong waivers are routinely available in order to reassure States that they will not be subject to more burdensome requirements. We agree with this comment. Therefore, we are modifying the regulations at 7 CFR 273.24 to provide that generally, we will approve waivers for one year. However, we reserve the right to approve waivers for a shorter period if the data is insufficient, or to approve waivers for longer periods if the reasons are compelling.

One commenter suggested we allow waivers to be granted retroactively at the request of a State agency where the data supports a waiver during the months in question. This commenter pointed out that it sometimes takes longer than anticipated for a State agency to get the necessary paperwork together and to get a waiver request cleared through the proper channels. States that know they have solid data in support of a waiver should be able to implement or continue implementing a waiver they are confident will be granted during these delays and while they await USDA's approval. We recognize that it may take time for the State agency to draft and clear its request, whether it be for an initial or extension requests. However, as already discussed above, States may begin operating a waiver immediately upon requesting one if it has data that indicates the area has a 12 month average unemployment rate above 10 percent or has been designated a LSA by the ETA. For all other requests, in the event a State agency submits a request to us in an untimely fashion due to circumstances beyond its control, we reserve the right to make a retroactive approval. However, we believe these decisions should be made on a case-by-case basis and not codified in regulations. We encourage State agencies to begin working on waiver requests (both initial and extensions) and submit them to us in a timely fashion, taking into consideration the amount of time it will take to get such a request cleared through the proper State channels, so that retroactive approval does not become an issue. We will continue to expedite the approval of these requests, and in those circumstances which warrant it, we will grant retroactive approval.

We proposed that State agencies have complete discretion to define the geographic areas covered by waivers so long as they provide data for the corresponding area. Most of the comments we received supported this proposal. We received one comment suggesting that State agencies may want to define areas that do not correspond with census tracts or the catchment areas of unemployment compensation offices, making a mismatch between data and areas. This commenter suggested we clarify in the regulations that this is permissible. For simplicity sake, we encourage States to define areas for which corresponding data exists. We believe this is very easily done, especially since unemployment data goes down to the census tract level. However, we also realize that there are situations where data does not correspond to already defined areas, such as Indian Reservations. In these situations, we suggest State agencies submit data that corresponds as closely to the area as possible. We will consider it and decide on a case-by-case basis whether or not to approve the request. In this final rule we are modifying the regulation at 7 CFR 273.24 to provide that if corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

Implementation

This rule is effective no later than April 2, 2001, except for the amendment to 7 CFR 272.2(d)(1)(xiii) which is effective August 1, 2001. State agencies must implement the provisions in this final rule no later than August 1, 2001.

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 procedures, Claims Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping, Social security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

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

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, add paragraph (c)(1)(vii) and paragraph (g)(165) to read as follows.

§ 272.1 General terms and conditions.

* * * * *

(c) * * *

(1) * * *

(vii) Local, State or Federal law enforcement officers, upon written request, for the purpose of obtaining the address, social security number, and, if available, photograph of any household member, if the member is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor), or is violating a condition of probation or parole imposed under a Federal or State law. The State agency shall not require a household to present photographic identification as a condition of eligibility and must accept any document that reasonably establishes the applicant's identity. The State agency shall also provide information regarding a household member, upon the written request of a law enforcement officer acting in his or her official capacity, where such member has information necessary for the apprehension or investigation of another member who is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole. If a law enforcement officer provides documentation indicating that a household member is fleeing to avoid prosecution or custody for a felony, or has violated a condition of probation or parole, the State agency shall terminate the participation of the member. A request for information absent documentation would not be sufficient to terminate the member's participation. The State agency shall disclose only such information as is necessary to comply with a specific written request of a law enforcement agency authorized by this paragraph.

* * * * *

(g) * * *

(165) *Amendment No. 387*—This rule is effective no later than {insert the first day of the month 60 days after publication of the final rule, except for the amendment to 7 CFR 272.2(d)(1)(xiii) which is effective August 1, 2001. State agencies must implement the provisions in this final rule no later than August 1, 2001.

3. In § 272.2, new paragraph (d)(1)(xiii) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(xiii) If the State agency chooses to implement the optional provisions specified in (273.11(k), (l), (o), (p), and (q) of this chapter, it must include in the Plan's attachment the options it selected, the guidelines it will use, and any good cause criteria under paragraph (o). For § 273.11(k) of this chapter, the State agency must identify which sanctions in the other programs this provision applies to. The State agency must also include in the plan a description of the safeguards it will use to restrict the use of information it collects in implementing the optional provision contained in § 273.11(p) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.1, new paragraphs (b)(7)(viii), (b)(7)(ix), (b)(7)(x), (b)(7)(xi), and (b)(7)(xii) are added to read as follows:

§ 273.1 Household concept.

* * * * *

(b) * * *

(7) * * *

(viii) Individuals who are ineligible under § 273.11(m) because of a drug-related felony conviction.

(ix) At State agency option, individuals who are disqualified in another assistance program in accordance with § 273.11(k).

(x) Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, or who are violating a condition of probation or parole who are ineligible under § 273.11(n).

(xi) Individuals disqualified for failure to cooperate with child support enforcement agencies in accordance with § 273.11(o) or (p), or for being delinquent in any court-ordered child support obligation in accordance with § 273.11(q).

(xii) Persons ineligible under § 273.24, the time limit for able-bodied adults.

* * * * *

5. In § 273.2:

a. A new paragraph (f)(1)(xiv)is added.

b. Paragraph (f)(8)(i)(C) is redesignated as paragraph (f)(8)(i)(D), and a new paragraph (f)(8)(i)(C) is added.

c. Paragraph (j)(2)(vii)(D) is added.

The additions read as follows:

§ 273.2 Application processing.

* * * * *

(f) * * *

(1) * * *

(xiv) *Additional verification for able-bodied adults subject to the time limit.*

(A) *Hours worked.* For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

(B) *Countable months in another state.* For individuals subject to the food stamp time limit of § 273.24, the State agency must verify the number of countable months (as defined in § 273.24(b)(1)) an individual has used in another State if there is an indication that the individual participated in that State. The normal processing standards of 7 CFR 273.2(g) apply. The State agency may accept another State agency's assertion as to the number of countable months an individual has used in another State.

* * * * *

(8) * * *

(i) * * *

(C) For individuals subject to the food stamp time limit of § 273.24 who are satisfying the work requirement by working, by combining work and participation in a work program, or by participating in a work program that is not operated or supervised by the State agency, the individuals' work hours shall be verified.

* * * * *

(j)* * *

(2) * * *

(vii)* * *

(D) Any member of that household is ineligible under § 273.11(m) by virtue of a conviction for a drug-related felony.

* * * * *

6. In § 273.11:

a. The introductory text of paragraph (c) is revised, and the heading and introductory text of paragraphs (c)(1) and (c)(2) are revised.

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

c. Paragraph (j) is revised.

d. Paragraphs (k), (l), (m), (n), (o), (p), and (q) are added.

The additions and revisions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) * * *

During the period of time that a household member cannot participate for the reasons addressed in this section, the eligibility and benefit level of any remaining household members shall be determined in accordance with the procedures outlined in this section.

(1) *Intentional Program violation, felony drug conviction, or fleeing felon disqualifications, and workfare or work requirement sanctions.* The eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of a disqualification for an intentional Program violation, a felony drug conviction, their fleeing felon status, noncompliance with a work requirement of § 273.7, or imposition of a sanction while they were participating in a household disqualified because of failure to comply with workfare requirements shall be determined as follows:

* * * * *

(2) *SSN disqualifications, comparable disqualifications, child support disqualifications, and ineligible ABAWDs.* The eligibility and benefit level of any remaining household members of a household containing individuals determined to be ineligible for refusal to obtain or provide an SSN, for meeting the time limit for able-bodied adults without dependents or for being disqualified under paragraphs (k), (o), (p), or (q) of this section shall be determined as follows:

* * * * *

(4) * * *

(ii) *Disqualified or determined ineligible for reasons other than intentional Program violation.* If a household's benefits are reduced or terminated within the certification period for reasons other than an Intentional Program Violation disqualification, the State agency shall issue a notice of adverse action in accordance with § 273.13(a)(2) which informs the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members, and the action the household must take to end the ineligibility.

* * * * *

(j) *Reduction of public assistance benefits.* If the benefits of a household that is receiving public assistance are reduced under a Federal, State, or local

means-tested public assistance program because of the failure of a food stamp household member to perform an action required under the assistance program or for fraud, the State agency shall not increase the household's food stamp allotment as the result of the decrease in income. In addition to prohibiting an increase in food stamp benefits, the State agency may impose a penalty on the household that represents a percentage of the food stamp allotment that does not exceed 25 percent. The 25 percent reduction in food stamp benefits must be based on the amount of food stamp benefits the household should have received under the regular food stamp benefit formula, taking into account its actual (reduced) income. However, under no circumstances can the food stamp benefits be allowed to rise. Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family cap, failing to reapply or complete the application process for continued assistance under the other program, failing to perform an action that the individual is unable to perform as opposed to refusing to perform, or failing to comply with a purely procedural requirement, shall not be considered a failure to perform an action required by an assistance program for purposes of this provision. A procedural requirement, which would not trigger a food stamp sanction, is a step that an individual must take to continue receiving benefits in the assistance program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a food stamp sanction, is a behavioral requirement in the assistance program designed to improve the well being of the recipient family, such as participating in job search activities. The State agency shall not apply this provision to individuals who fail to perform a required action at the time the individual initially applies for assistance. The State agency shall not increase food stamp benefits, and may reduce food stamp benefits only if the person is receiving such assistance at the time the reduction in assistance is imposed or the reduction in assistance is imposed at the time of application for continued assistance benefits if there is no break in participation. The individual must be certified for food stamps at the time of the failure to perform a required action for this provision to apply. Assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.

(1) For purposes of this provision a Federal, State or local ''means-tested public assistance program'' shall mean public or general assistance as defined in § 271.2 of this chapter, and is referred to as ''assistance''. This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information. The State agency, rather than the household, shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(2) The prohibition on increasing food stamp benefits applies for the duration of the reduction in the assistance program. If at any time the State agency can no longer ascertain the amount of the reduction, then the State agency may terminate the food stamp sanction. However, the sanction may not exceed the sanction in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, it would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time. It shall be concurrent with the reduction in the other assistance program to the extent allowed by normal food stamp change processing and notice procedures.

(3) The State agency shall determine how to prevent an increase in food stamp benefits. Among other options, the State agency may increase the assistance grant by a flat percent, not to exceed 25 percent, for all households that fail to perform a required action in lieu of computing an individual amount or percentage for each affected household.

(4) If the allotment of a household is reduced under Title IV–A of the Social Security Act, the State agency may use the same procedures that apply under Title IV–A to prevent an increase in food stamp benefits as the result of the decrease in Title IV–A benefits. For example, the same budgeting procedures and combined notices and hearings may be used, but the food stamp allotment may not be reduced by more than 25 percent.

(5) The State agency must lift the ban on increasing food stamp benefits if it becomes aware that the person has become ineligible for the assistance program during the disqualification period for some other reason, or the person's assistance case is closed.

(6) If an individual moves within the State, the prohibition on increasing food stamp benefits shall be applied to the gaining household unless that person is ineligible for the assistance program for some other reason. If such individual moves to a new State the prohibition on increasing benefits shall not be applied.

(7) The State agency must restore lost benefits when necessary in accordance with § 273.17 if it is later determined that the reduction in the public assistance grant was not appropriate.

(8) The State agency must act on changes which are not related to the assistance violation and that would affect the household's benefits.

(9) The State agency must include in its State Plan of Operations any options it has selected in this paragraph (j).

(k) *Comparable disqualifications.* If a disqualification is imposed on a member of a household for failure to perform an action required under a Federal, State or local means-tested public assistance program, the State agency may impose the same disqualification on the member of the household under the Food Stamp Program. The program must be authorized by a Federal, State, or local law, but the provision itself does not have to be specified in the law. A State agency may choose to apply this provision to one or more of these programs, and it may select the types of disqualifications within a program that it wants to impose on food stamp recipients. The State agency shall be responsible for obtaining information about sanctions from other programs and changes in those sanctions.

(1) For purposes of this section Federal, State or local ''means-tested public assistance program'' shall mean public and general assistance as defined in § 271.2 of this chapter.

(2) The State agency shall not apply this provision to individuals who are disqualified at the time the individual initially applies for assistance benefits. It may apply the provision if the person was receiving such assistance at the time the disqualification in the assistance program was imposed and to disqualifications imposed at the time of application for continued assistance benefits if there is no break in participation with the following exceptions: Reaching a time limit for time-limited benefits, having a child that is not eligible because of a family

cap, failing to reapply or complete the application process for continued assistance, failing to perform an action that the individual is unable to perform as opposed to refusing to perform, and failing to perform purely procedural requirements, shall not be considered failures to perform an action required by an assistance program. A procedural requirement, which would not trigger a food stamp sanction, is a step that an individual must take to continue receiving benefits in the assistance program such as submitting a monthly report form or providing verification of circumstances. A substantive requirement, which would trigger a food stamp sanction, is a behavioral requirement in the assistance program designed to improve the well being of the recipient family, such as participating in job search activities. The individual must be receiving food stamps at the time of the disqualification in the assistance program to be disqualified from the Food Stamp Program under this provision.

(3) The State agency must stop the food stamp disqualification when it becomes aware that the person has become ineligible for assistance for some other reason, or the assistance case is closed.

(4) If a disqualification is imposed for a failure of an individual to perform an action required under a program under Title IV–A of the Social Security Act, the State may use the rules and procedures that apply under the Title IV–A program to impose the same disqualification under the Food Stamp Program.

(5) Only the individual who committed the violation in the assistance program may be disqualified for food stamp purposes even if the entire assistance unit is disqualified for Title IV–A purposes.

(6) A comparable disqualification for food stamp purposes shall be imposed concurrently with the disqualification in the assistance program to the extent allowed by normal food stamp processing times and notice requirements. The State agency may determine the length of the disqualification, providing that the disqualification does not exceed the disqualification in the other program. If the sanction is still in effect at the end of one year, the State agency shall review the case to determine if the sanction continues to be appropriate. If, for example, the household is not receiving assistance, if would not be appropriate to continue the sanction. Sanctions extended beyond one year must be reviewed at least annually but may be ended by the State agency at any time.

(7) If there is a pending disqualification for a food stamp violation and a pending comparable disqualification, they shall be imposed concurrently to the extent appropriate. For example, if the household is disqualified for June for a food stamp violation and an individual is disqualified for June and July for an assistance program violation, the whole household shall be disqualified for June and the individual shall be disqualified for July for food stamp purposes.

(8) The State agency must treat the income and resources of the disqualified individual in accordance with § 273.11(c)(2).

(9) After a disqualification period has expired, the person may apply for food stamp benefits and shall be treated as a new applicant or a new household member, except that a current disqualification based on a food stamp work requirement shall be considered in determining eligibility.

(10) A comparable food stamp disqualification may be imposed in addition to any coupon allotment reductions made in accordance with paragraph (j) of this section.

(11) State agencies shall state in their Plan of Operation if they have elected to apply comparable disqualifications, identify which sanctions in the other programs this provision applies to, and indicate the options and procedures allowed in paragraphs (k)(1), (k)(2), (k)(3), (k)(4), and (k)(10) of this section which they have selected.

(12) The State agency must act on changes which are not related to the assistance violation and that would affect the household's benefits.

(13) The State agency must restore lost benefits when necessary in accordance with 7 CFR 273.17 if it is later determined that the reduction in the public assistance grant was not appropriate.

(l) *School Attendance.* Section 404(i) of Part A of the Social Security Act, 42 U.S.C. 601, et seq., provides that any state receiving a TANF block grant cannot be prohibited from sanctioning a family that includes an adult who has received assistance financed with federal TANF dollars or provided from the food stamp program if such adult fails to ensure that the minor dependent children of such adult attend school as required by the law of the State in which the minor children reside. Section 404(j) of Part A of the Social Security Act, 42 U.S.C. 601, *et seq.*, provides that States shall not be prohibited from sanctioning a family that includes an adult who is older than 20 and younger than 51 and who has received assistance that is either financed with federal TANF funds or provided through the food stamp program if such adult does not have, or is not working toward attaining, a secondary school diploma or recognized equivalent. These provisions do not provide independent authority for food stamp sanctions beyond any that may apply through paragraphs (j) and (k) of this section.

(m) *Individuals convicted of drug-related felonies.* An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. If the State legislature has enacted legislation limiting the period of disqualification, the period of ineligibility shall be equal to the length of the period provided under such legislation. Ineligibility under this provision is only limited to convictions based on behavior which occurred after August 22, 1996. The income and resources of individuals subject to disqualification under this paragraph (m) shall be treated in accordance with the procedures at paragraph (c)(1) of this section.

(n) *Fleeing felons and probation or parole violators.* Individuals who are fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the State of New Jersey, a high misdemeanor) or who are violating a condition of probation or parole under a Federal or State law shall not be considered eligible household members. The income and resources of the ineligible member shall be handled in accordance with (c)(1) of this section.

(o) *Custodial parent's cooperation with the State Child Support Agency.* For purposes of this provision, a custodial parent is a natural or adoptive parent who lives with his or her child, or other individual who is living with and exercises parental control over a child under the age of 18.

(1) *Option to disqualify custodial parent for failure to cooperate.* At the option of a State agency, subject to paragraphs (o)(2) and (o)(4) of this section, no natural or adoptive parent or, at State agency option, other individual (collectively referred to in

this paragraph (o) as ''the individual'') who is living with and exercising parental control over a child under the age of 18 who has an absent parent shall be eligible to participate in the Food Stamp Program unless the individual cooperates with the agency administering a State Child Support Enforcement Program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*), hereafter referred to as the State Child Support Agency.

(i) If the State agency chooses to implement paragraph (o)(1) of this section, it must notify all individuals of this requirement in writing at the time of application and reapplication for continued benefits.

(ii) If the State agency chooses to implement paragraph (o)(1) of this section, it must refer all appropriate individuals to the State Child Support Agency.

(iii) If the individual is receiving TANF or Medicaid, or assistance from the State Child Support Agency, and has already been determined to be cooperating, or has been determined to have good cause for not cooperating, then the State agency shall consider the individual to be cooperating for food stamp purposes.

(iv) The individual must cooperate with the State Child Support Agency in establishing paternity of the child, and in establishing, modifying, or enforcing a support order with respect to the child and the individual in accordance with section 454(29) of the Social Security Act (42 U.S.C. 654(29)).

(v) Pursuant to Section 454(29)(E) of the Social Security Act (42 U.S.C. 654(29)(E) the State Child Support Agency will notify the individual and the State agency whether or not it has determined that the individual is cooperating in good faith.

(2) *Claiming good cause for non-cooperation.* Prior to requiring cooperation under paragraph (o)(1) of this section, the State agency will notify the household in writing at initial application and at application for continued benefits of the right to good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. Paragraph (o)(1) of this section shall not apply to the individual if good cause is found for refusing to cooperate, as determined by the State agency:

(i) *Circumstances under which cooperation may be ''against the best interests of the child.''* The individual's failure to cooperate is deemed to be for ''good cause'' if:

(A) The individual meets the good cause criteria established under the State program funded under Part A of Title IV or Part D of Title IV of the Social Security Act (42 U.S.C. 601, *et seq,* or 42 U.S.C. 651, *et seq.*) (whichever agency is authorized to define and determine good cause) for failing to cooperate with the State Child Support Agency; or

(B) Cooperating with the State Child Support Agency would make it more difficult for the individual to escape domestic violence or unfairly penalize the individual who is or has been victimized by such violence, or the individual who is at risk of further domestic violence. For purposes of this provision, the term ''domestic violence'' means the individual or child would be subject to physical acts that result in, or are threatened to result in, physical injury to the individual; sexual abuse; sexual activity involving a dependent child; being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; threats of, or attempts at physical or sexual abuse; mental abuse; or neglect or deprivation of medical care.

(C) The individual meets any other good cause criteria identified by the State agency. These criteria will be defined in consultation with the Child Support Agency or TANF program, whichever is appropriate, and identified in the State plan according to § 272.2(d)(xiii).

(ii) *Proof of good cause claim.* (A) The State agency will accept as corroborative evidence the same evidence required by Part A of Title IV or Part D of Title IV of the Social Security Act (42 U.S.C. 601, *et seq.* or 42 U.S.C. 651, *et seq.*) to corroborate a claim of good cause.

(B) The State agency will make a good cause determination based on the corroborative evidence supplied by the individual only after it has examined the evidence and found that it actually verifies the good cause claim.

(iii) *Review by the State Child Support or TANF Agency.* Prior to making a final determination of good cause for refusing to cooperate, the State agency will afford the State Child Support Agency or the agency which administers the program funded under Part A of the Social Security Act the opportunity to review and comment on the findings and the basis for the proposed determination and consider any recommendation from the State Child Support or TANF Agency.

(iv) *Delayed finding of good cause.* The State agency will not deny, delay, or discontinue assistance pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish corroborative evidence and information. In such cases, the State agency must abide by the normal processing standards according to § 273.2(g).

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual has not cooperated without good cause, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled in accordance with paragraph(c)(2) of this section.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*)

(5) *Terminating the Disqualification.* The period of disqualification ends once it has been determined that the individual is cooperating with the State Child Support Agency. The State agency must have procedures in place for re-qualifying such an individual.

(p) *Non-custodial parent's cooperation with child support agencies.* For purposes of this provision, a ''non-custodial parent'' is a putative or identified parent who does not live with his or her child who is under the age of 18.

(1) *Option to disqualify non-custodial parent for refusal to cooperate.* At the option of a State agency, subject to paragraphs (p)(2) and (p)(4) of this section, a putative or identified non-custodial parent of a child under the age of 18 (referred to in this subsection as ''the individual'') shall not be eligible to participate in the Food Stamp Program if the individual refuses to cooperate with the State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*), hereafter referred to as the State Child Support Agency, in establishing the paternity of the child (if the child is born out of wedlock); and in providing support for the child.

(i) If the State agency chooses to implement paragraph (p)(1) of this section, it must notify all individuals in writing of this requirement at the time of application and reapplication for continued benefits.

(ii) If the individual is receiving TANF, Medicaid, or assistance from the State Child Support Agency, and has already been determined to be cooperating, or has been determined to have good cause for not cooperating,

then the State agency shall consider the individual is cooperating for food stamp purposes.

(iii) If the State agency chooses to implement paragraph (p)(1) of this section, it must refer all appropriate individuals to the State Child Support Agency established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*).

(iv) The individual must cooperate with the State Child Support Agency in establishing the paternity of the child (if the child is born out of wedlock), and in providing support for the child.

(v) Pursuant to Section 454(29)(E) of the Social Security Act (42 U.S.C. 654(29)(E)), the State Child Support Agency will notify the individual and the State agency whether or not it has determined that the individual is cooperating in good faith.

(2) *Determining refusal to cooperate.* If the State Child Support Agency determines that the individual is not cooperating in good faith, then the State agency will determine whether the non-cooperation constitutes a refusal to cooperate. Refusal to cooperate is when an individual has demonstrated an unwillingness to cooperate as opposed to an inability to cooperate.

(3) *Individual disqualification.* If the State agency determines that the non-custodial parent has refused to cooperate, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled according to paragraph (c)(2) of this section.

(4) *Fees.* A State electing to implement this provision shall not require the payment of a fee or other cost for services provided under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*)

(5) *Privacy.* The State agency shall provide safeguards to restrict the use of information collected by a State agency administering the program established under Part D of Title IV of the Social Security Act (42 U.S.C. 651, *et seq.*) to purposes for which the information is collected.

(6) *Termination of disqualification.* The period of disqualification ends once it has been determined that the individual is cooperating with the child support agency. The State agency must have procedures in place for re-qualifying such an individual.

(q) *Disqualification for child support arrears.*

(1) *Option to disqualify.* At the option of a State agency, no individual shall be eligible to participate in the Food Stamp Program as a member of any household during any month that the individual is delinquent in any payment due under a court order for the support of a child of the individual. The State agency may opt to apply this provision to only non-custodial parents.

(2) *Exceptions.* A disqualification under paragraph (q)(1) of this section shall not apply if:

(i) A court is allowing the individual to delay payment;

(ii) The individual is complying with a payment plan approved by a court or the State agency designated under Part D of Title IV of the Social Security Act (42 U.S.C., 651 *et seq.*) to provide support of a child of the individual; or

(iii) The State agency determines the individual has good cause for non-support.

(3) *Individual disqualification.* If the State agency has elected to implement this provision and determines that the individual should be disqualified for child support arrears, then that individual shall be ineligible to participate in the Food Stamp Program. The disqualification shall not apply to the entire household. The income and resources of the disqualified individual shall be handled according to paragraph (c)(2) of this section.

(4) *Collecting claims.* State agencies shall initiate collection action as provided for in § 273.18 for any month a household member is disqualified for child support arrears by sending the household a written demand letter which informs the household of the amount owed, the reason for the claim and how the household may pay the claim. The household should also be informed as to the adjusted amount of income, resources, and deductible expenses of the remaining members of the household for the month(s) a member is disqualified for child support arrears.

7. In § 273.12, a new paragraph (a)(1)(viii) is added to read as follows:

§ 273.12 Reporting changes.

(a) * * *

(1) * * *

(viii) For able-bodied adults subject to the time limit of § 273.24, any changes in work hours that bring an individual below 20 hours per week, averaged monthly, as defined in § 273.24(a)(1)(i). An individual shall report this information in accordance with the reporting system for income to which he is subject.

* * * * *

8. In § 273.16

a. Remove the last sentence in paragraph (a)(1).

b. Revise paragraphs (b) and (c).

c. Revise paragraph (e)(8)(i).

d. Remove paragraph (e)(8)(iii) and redesignate paragraph (e)(8)(iv) as paragraph (e)(8)(iii).

e. Remove paragraph (f)(2)(iii) and redesignate paragraph (f)(2)(iv) as paragraph (f)(2)(iii).

f. Remove paragraph (g)(2)(ii) and redesignate paragraph (g)(2)(iii) as paragraph (g)(2)(ii).

g. Remove paragraph (h)(2)(ii) and redesignate paragraph (h)(2)(iii) as paragraph (h)(2)(ii).

The revisions read as follows:

§ 273.16 Disqualification for intentional Program violation.

* * * * *

(b) *Disqualification penalties.*

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation, except as provided under paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section;

(ii) For a period of twenty-four months upon the second occasion of any intentional Program violation, except as provided in paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) of this section; and

(iii) Permanently for the third occasion of any intentional Program violation.

(2) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) shall be ineligible to participate in the Program:

(i) For a period of twenty four months upon the first occasion of such violation; and

(ii) Permanently upon the second occasion of such violation.

(3) Individuals found by a Federal, State or local court to have used or received benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the Program upon the first occasion of such violation.

(4) An individual convicted by a Federal, State or local court of having trafficked benefits for an aggregate amount of $500 or more shall be

permanently ineligible to participate in the Program upon the first occasion of such violation.

(5) Except as provided under paragraph (b)(1)(iii) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.

(6) The penalties in paragraphs (b)(2) and (b)(3) of this section shall also apply in cases of deferred adjudication as described in paragraph (h) of this section, where the court makes a finding that the individual engaged in the conduct described in paragraph (b)(2) and (b)(3) of this section.

(7) If a court fails to impose a disqualification or a disqualification period for any intentional Program violation, the State agency shall impose the appropriate disqualification penalty specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section unless it is contrary to the court order.

(8) One or more intentional Program violations which occurred prior to April 1, 1983 shall be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

(9) Regardless of when an action taken by an individual which caused an intentional Program violation occurred, the disqualification periods specified in paragraphs (b)(2) and (b)(3) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(10) For the disqualification periods in paragraphs (b)(1), (b)(5) or (b)(6) of this section, if the offense occurred prior to the implementation of these penalties, the State agency may establish a policy of disqualifying these individuals in accordance with the disqualification periods in effect at the time of the offense. This policy must be consistently applied for all affected individuals.

(11) State agencies shall disqualify only the individual found to have committed the intentional Program violation, or who signed the waiver of the right to an administrative disqualification hearing or disqualification consent agreement in cases referred for prosecution, and not the entire household.

(12) Even though only the individual is disqualified, the household, as defined in § 273.1, is responsible for making restitution for the amount of any overpayment. All intentional Program violation claims must be established and collected in accordance with the procedures set forth in § 273.18.

(13) The individual must be notified in writing once it is determined that he/she is to be disqualified. The disqualification period shall begin no later than the second month which follows the date the individual receives written notice of the disqualification. The disqualification period must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

(c) *Definition of intentional Program violation.* Intentional Program violations shall consist of having intentionally:

(1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or

(2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

* * * * *

(e) * * *

(8) * * *

(i) If the hearing authority rules that the individual has committed an intentional Program violation, the household member must be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section. The same act of intentional Program violation repeated over a period of time must not be separated so that separate penalties can be imposed.

* * * * *

10. In § 273.24:

a. the section heading is revised.

b. paragraph (a) introductory text is revised.

c. paragraphs (a)(1) and (a)(2) are redesignated as paragraphs (a)(5) and (a)(6).

d. paragraphs (b), (c), (d), and (e) are redesignated as paragraphs (g), (h), (i) and (j).

e. the heading of the newly designated paragraph (g) is revised to read ''*15 percent exemptions.*''

f. paragraphs (a)(1) through (a)(4) and paragraphs (b) through (f) are added as follows.

§ 273.24 Time limit for able-bodied adults.

(a) *Definitions.* For purposes of the food stamp time limit, the terms below have the following meanings:

(1) *Fulfilling the work requirement* means:

(i) Working 20 hours per week, averaged monthly; for purposes of this provision, 20 hours a week averaged monthly means 80 hours a month;

(ii) Participating in and complying with the requirements of a work program 20 hours per week, as determined by the State agency;

(iii) Any combination of working and participating in a work program for a total of 20 hours per week, as determined by the State agency; or

(iv) Participating in and complying with a workfare program;

(2) *Working* means:

(i) Work in exchange for money;

(ii) Work in exchange for goods or services (''in kind'' work); or

(iii) Unpaid work, verified under standards established by the State agency.

(iv) Any combination of paragraphs (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) of this section.

(3) *Work Program* means:

(i) A program under the Workforce Investment Act (Pub. L. 105–220);

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

(iii) An employment and training program, other than a job search or job search training program, operated or supervised by a State or political subdivision of a State that meets standards approved by the Governor of the State, including a program under § 273.7(f). Such a program may contain job search or job search training as a subsidiary component as long as such component is less than half the requirement.

(4) *Workfare program* means:

(i) A program under § 273.22; or

(ii) A comparable program established by a State or political subdivision of a State.

* * * * *

(b) *General Rule.* Individuals are not eligible to participate in the Food Stamp Program as a member of any household if the individual received food stamps for more than three countable months during any three-year period, except that individuals may be eligible for up to three additional countable months in accordance with paragraph (e) of this section.

(1) *Countable months.* Countable months are months during which an individual receives food stamps for the full benefit month while not:

(i) Exempt under paragraph (c) of this section;

(ii) Covered by a waiver under paragraph (f) of this section;

(iii) Fulfilling the work requirement as defined in paragraph (a)(1) of this section; or

(iv) Receiving benefits that are prorated in accordance with § 273.10.

(2) *Good cause.* As determined by the State agency, if an individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirement if the absence from work is temporary and the individual retains his or her job. Good cause shall include circumstances beyond the individual's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation.

(3) *Measuring the three-year period.* The State agency may measure and track the three-year period as it deems appropriate. The State agency may use either a ''fixed'' or ''rolling'' clock. If the State agency chooses to switch tracking methods it must inform FNS in writing. With respect to a State, the three-year period:

(i) Shall be measured and tracked consistently so that individuals who are similarly situated are treated the same; and

(ii) Shall not include any period before the earlier of November 22, 1996, or the date the State notified food stamp recipients of the application of Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

(4) *Treatment of income and resources.* The income and resources of an individual made ineligible under this paragraph (b) shall be handled in accordance with § 273.11(c)(2).

(5) *Benefits received erroneously.* If an individual subject to this section receives food stamp benefits erroneously, the State agency shall consider the benefits to have been received for purposes of this provision unless or until the individual pays it back in full.

(6) *Verification.* Verification shall be in accordance with § 273.2(f)(1) and (f)(8).

(7) *Reporting.* A change in work hours below 20 hours per week, averaged monthly, is a reportable change in accordance with § 273.12(a)(1)(viii). Regardless of the type of reporting system the State agency assigns to potential ABAWDs, the State agency must adhere to the statutory requirements of time-limited benefits for individuals who are subject to the work requirement. The State agency may opt to consider work performed in a job that was not reported according to the requirements of § 273.12 ''work.''

(8) *Applicability of Food Stamp Act.* Nothing in this paragraph (b) shall make an individual eligible for food stamp benefits if the individual is not otherwise eligible for benefits under the other provisions of these regulations and the Food Stamp Act of 1977, as amended.

(c) *Exemptions.* An individual is exempt from the time limit if he or she is;

(1) Under 18 or 50 years of age or older;

(2) Determined by the State agency to be medically certified as physically or mentally unfit for employment. An individual is medically certified as physically or mentally unfit for employment if he or she:

(i) Is receiving temporary or permanent disability benefits issued by governmental or private sources;

(ii) Is obviously mentally or physically unfit for employment as determined by the State agency; or

(iii) If the unfitness is not obvious, provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licensed or certified psychologist, a social worker, or any other medical personnel the State agency determines appropriate, that he or she is physically or mentally unfit for employment.

(3) Is a parent (natural, adoptive, or step) of a household member under age 18, even if the household member who is under 18 is not himself eligible for food stamps;

(4) Is residing in a household where a household member is under age 18, even if the household member who is under 18 is not himself eligible for food stamps;

(5) Is otherwise exempt from work requirements under section 6(d)(2) of the Food Stamp Act, as implemented in regulations at § 273.7(b); or

(6) Is pregnant.

(d) *Regaining eligibility.* (1) An individual denied eligibility under paragraph (b) of this section, or who did not reapply for benefits because he was not meeting the work requirements under paragraph (b) of this section, shall regain eligibility to participate in the Food Stamp Program if, as determined by the State agency, during any 30 consecutive days, he or she:

(i) Worked 80 or more hours;

(ii) Participated in and complied with the requirements of a work program for 80 or more hours;

(iii) Any combination of work and participation in a work program for a total of 80 hours; or participated in and complied with a workfare program; or

(iv) At State agency option, verifies that the he or she will meet one of the requirements in paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), or (d)(1)(v) of this section, within the 30 days subsequent to application; or

(v) Becomes exempt.

(2) An individual regaining eligibility under paragraph (d)(1) of this section shall have benefits calculated as follows:

(i) For individuals regaining eligibility by working, participating in a work program, or combining hours worked and hours participating in a work program, the State agency may either prorate benefits from the day the 80 hours are completed or from the date of application, or

(ii) For individuals regaining eligibility by participating in a workfare program, and the workfare obligation is based on an estimated monthly allotment prorated back to the date of application, then the allotment issued must be prorated back to this date.

(3) There is no limit on how many times an individual may regain eligibility and subsequently maintain eligibility by meeting the work requirement.

(e) *Additional three-month eligibility.* An individual who regained eligibility under paragraph (d) of this section and who is no longer fulfilling the work requirement as defined in paragraph (a) of this section is eligible for a period of three consecutive countable months (as defined in paragraph (b) of this section), starting on the date the individual first notifies the State agency that he or she is no longer fulfilling the work requirement, unless the individual has been satisfying the work requirement by participating in a work or workfare program, in which case the period starts on the date the State agency notifies the individual that he or she is no longer meeting the work requirement. An individual shall not receive benefits under this paragraph (e) more than once in any three-year period.

(f) *Waivers.*

(1) *General.* On the request of a State agency, FNS may waive the time limit for a group of individuals in the State if we determine that the area in which the individuals reside:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Required data.* The State agency may submit whatever data it deems appropriate to support its request. However, to support waiver requests based on unemployment rates or labor force data, States must submit data that relies on standard Bureau of Labor Statistics (BLS) data or methods. A non-exhaustive list of the kinds of data a State agency may submit follows:

(i) To support a claim of unemployment over 10 percent, a State agency may submit evidence that an area has a recent 12 month average unemployment rate over 10 percent; a recent three month average unemployment rate over 10 percent; or an historical seasonal unemployment rate over 10 percent; or

(ii) To support a claim of lack of sufficient jobs, a State may submit evidence that an area: is designated as a Labor Surplus Area (LSA) by the Department of Labor's Employment and Training Administration (ETA); is determined by the Department of Labor's Unemployment Insurance Service as qualifying for extended unemployment benefits; has a low and declining employment-to-population ratio; has a lack of jobs in declining occupations or industries; is described in an academic study or other publications as an area where there are lack of jobs; has a 24-month average unemployment rate 20 percent above the national average for the same 24-month period. This 24-month period may not be any earlier than the same 24-month period the ETA uses to designate LSAs for the current fiscal year.

(3) *Waivers that are readily approvable.* FNS will approve State agency waivers where FNS confirms:

(i) Data from the BLS or the BLS cooperating agency that shows an area has a most recent 12 month average unemployment rate over 10 percent;

(ii) Evidence that the area has been designated a Labor Surplus Area by the ETA for the current fiscal year; or

(iii) Data from the BLS or the BLS cooperating agency that an area has a 24 month average unemployment rate that exceeds the national average by 20 percent for any 24-month period no earlier than the same period the ETA uses to designate LSAs for the current fiscal year.

(4) *Effective date of certain waivers.* In areas for which the State certifies that data from the BLS or the BLS cooperating agency show a most recent 12 month average unemployment rate over 10 percent; or the area has been designated as a Labor Surplus Area by the Department of Labor's Employment and Training Administration for the current fiscal year, the State may begin to operate the waiver at the time the waiver request is submitted. FNS will contact the State if the waiver must be modified.

(5) *Duration of waiver.* In general, waivers will be approved for one year. The duration of a waiver should bear some relationship to the documentation provided in support of the waiver request. FNS will consider approving waivers for up to one year based on documentation covering a shorter period, but the State agency must show that the basis for the waiver is not a seasonal or short term aberration. We reserve the right to approve waivers for a shorter period at the State agency's request or if the data is insufficient. We reserve the right to approve a waiver for a longer period if the reasons are compelling.

(6) *Areas covered by waivers.* States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.

Dated: January 9, 2001.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

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