Federal Register

Friday,
April 16, 2004

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272 and 273

Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

RIN 0584–AD30

Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to amend Food Stamp Program regulations to implement 11 provisions of the Farm Security and Rural Investment Act of 2002 that establish new eligibility and certification requirements for the receipt of food stamps. This rule would: Allow States, at their option, to treat legally obligated child support payments to a non-household member as an income exclusion rather than a deduction; allow a State option to exclude certain types of income that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs; replace the current, fixed standard deduction with a deduction that varies according to household size and is adjusted annually for cost-of-living increases; allow States to simplify the Standard Utility Allowance (SUA) if the State elects to use the SUA rather than actual utility costs for all households; allow States to use a standard deduction from income of $143 per month for homeless households with some shelter expenses; allow States to disregard reported changes in deductions during certification periods except for changes associated with a new residence or earned income until the next recertification; increase the resource limit for households with a disabled member from $2,000 to $3,000 consistent with the limit for households with an elderly member; allow States to exclude certain types of resources that the State does not count for TANF or Medicaid (section 1931); allow States to extend simplified reporting of changes to all households not exempt from periodic reporting; require State agencies that have a Web site to post applications on these sites in the same languages that the State uses for its written applications; allow States to extend from the current 3 months up to 5 months the period of time households may receive transitional food stamp benefits when they lose TANF cash assistance; and restore food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry, are under 18 regardless of date of entry, or have lived in the United States for 5 years as a qualified alien beginning on date of entry.

DATES: Comments must be received on or before June 15, 2004, to be assured of consideration.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to: Matthew Crispino, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 800, Alexandria Virginia, 22302, (703) 305–2490.
- E-Mail: Send comments to *fsphq-web@fns.usda.gov.*
- Fax: Submit comments by facsimile transmission to (703) 305–2486.
- Disk or CD–ROM: Submit comments on disk or CD–ROM to Mr. Crispino at the above address.
- Hand Delivery or Courier: Deliver comments to Mr. Crispino at the above address.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 812.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Mr. Crispino at the above address or by telephone at 703–305–2490.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Impact Analysis

Need for Action

This action is required to implement provisions of the Farm Security and Rural Investment Act of 2002 (FSRIA) (Pub. L. 107–171), which was enacted on May 13, 2002. This rulemaking proposes to amend Food Stamp Program regulations to implement 11 provisions of FSRIA that establish new eligibility and certification requirements for the receipt of food stamps. We have estimated the total Food Stamp Program costs to the Government of the FSRIA provisions implemented in the proposed rule as $595 million in fiscal year (FY) 2004 and $4.504 billion over the five years FY 2004 through FY 2008. The majority of the costs arise from Section 4103 of FSRIA, the standard deduction; Section 4104, the SUA; Section 4109, Reporting Requirements; Section 4115, Transitional Benefits; and Section 4401, Restoration of Benefits to Legal Immigrants. The costs of the remaining provisions in the rule are minimal and, therefore, will not be discussed in this analysis.

Standard Deduction—Section 4103

Discussion: This provision replaces a fixed standard deduction (used in calculating a household's benefit level) with one that is adjusted annually and that varies by household size. This rule provides that: (1) For the 48 contiguous States, the District of Columbia, Hawaii, Alaska, and the U.S. Virgin Islands, the standard deduction will be equal to 8.31 percent of the Food Stamp Program's monthly net income limit for household sizes up to six; (2) for Guam, the standard deduction will be equal to two times the monthly net income standard for household sizes up to six; (3) for the 48 contiguous States, the District of Columbia, Hawaii, Alaska, the U.S. Virgin Islands, and Guam, households with more than six members must receive the same standard deduction as a six-person household; and (4) the standard deduction for any household must not fall below the standard deduction in effect in FY 2002.

Effect on Low-Income Families: This provision will affect some low-income families not already receiving the maximum food stamp benefit by allowing them to claim a larger standard deduction and to obtain higher food stamp benefits. Larger households will be affected by the provision at implementation and smaller households will be affected over time as the new values of the standard deduction rise with inflation.

Cost Impact: We estimate that the cost to the Government of this provision will be $99 million in FY 2004 and $624 million over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2005 budget baseline.

First, the new standard deduction values were projected for each household size (one-person through six or more-persons) for each year. The new standard deduction values were based on monthly poverty guideline values by household size, as calculated by the

U.S. Department of Health and Human Services (HHS) and used for food stamp eligibility standards. The guidelines are published in February or March of each year and are the Food Stamp Program net income limits in the following fiscal year. The poverty guidelines used for setting the FY 2004 food stamp net income limits were published on February 7, 2003 and are the most current set available. The poverty threshold values for use in FY 2005 and beyond were calculated by inflating the FY 2004 values by the Consumer Price Index for All Urban Consumers from the Office of Management and Budget's economic assumptions for the President's FY 2005 budget. For each household size, these values were multiplied by 8.31 percent and the product was compared to the current standard deduction value of $134, the higher of which was adopted as the new standard deduction level. (For example, the monthly poverty threshold for a five-person household was $1,795 in FY 2004. Multiplying this value by 8.31 percent yields a product of $149, which is larger than the current standard deduction value of $134. The new standard deduction value would be $149.)

Second, the number of households affected for each household size and in each year was estimated based on participation projections from the President's FY 2005 budget baseline of December 2003. The projections were adjusted based on data on the proportion of households of each size not receiving the maximum allotment, from the Food and Nutrition Service (FNS) report, *Characteristics of Food Stamp Households: Fiscal Year 2002*, the most recent data available. Households already receiving the maximum allotment are excluded because even though the larger standard deduction decreases their net income, their benefits cannot increase. [For example, according to the report, 5.8 percent of all households were five-person households, 13.8 percent of which received the maximum benefit. The number of households was calculated as the total number of persons divided by the average household size of 2.32 persons per household, from the 2002 FNS report. The number of five-person households affected by the provision was calculated as 10,211,000 total households times 5.8 percent (in five-person households) times 86.2 percent (not receiving the maximum benefit)—equal to 511,000 households affected.]

The cost of this provision was then calculated for each household size in each year. The cost equaled the product of the change in the standard deduction value for the household size, times the number of households affected, times 12 months, times a benefit reduction rate of 37.5 percent. This benefit reduction rate represents the average change in benefits for each dollar change in the standard deduction. Because the excess shelter deduction is calculated based on a household's gross income less all other deductions, a change in the standard deduction yields an interaction with the shelter deduction for some households. According to the 2002 Characteristics report, about half of food stamp households claim a shelter deduction that is expected to increase with an increase in the standard deduction. Among these households, the benefit reduction rate is 45 percent. The remaining half of food stamp households do not claim a shelter deduction or already receive the maximum shelter deduction allowable and will not experience the added impact of a shelter deduction change. Among these households, the benefit reduction rate is 30 percent. Taking the weighted average of these two groups yields a benefit reduction rate of 37.5 percent. (For five-person households in FY 2004, the cost of this provision was estimated as a $15 change in the standard deduction ($149–$134), times 511,000 households, times 12 months, times 37.5 percent—equal to about $35 million.)

The individual costs for each household size were summed in each year and rounded to the nearest million dollars.

Expected Dollar Increase in the Food Stamp Standard Deduction by Household Size and Fiscal Years 2004 Through 2013

Household Size	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
1 person	0	0	0	0	0	0	0	0	0	0
2 persons	0	0	0	0	0	0	0	0	0	0
3 persons	0	0	0	0	0	0	0	0	0	0
4 persons	0	0	0	0	3	7	10	14	17	21
5 persons	15	17	20	23	27	31	35	39	43	48
6+ persons	37	39	42	46	50	55	59	64	69	74

Participation Impacts: While we do not expect this provision to significantly increase food stamp participation, we estimate that setting the standard deduction equal to 8.31 percent of poverty by household size will raise benefits among households currently participating. In FY 2004, households with five or more persons will be affected by this provision. Four-person households are expected to be affected beginning in FY 2008. Persons in smaller households will be affected in later years, as the indexed values of 8.31 percent of the poverty guidelines for their household size exceed $134. The number of persons affected was calculated from the number of household affected, times the number of persons per households, summed across household sizes. In FY 2004, we expect 4.9 million persons to receive an average of $1.70 more per month in food stamp benefits as a result of this provision.

Uncertainty: Because these estimates are largely based on recent food stamp quality control data, they have a high level of certainty. To the extent that the distribution of food stamp households by household size and income changes over time, the cost to the Government could be larger or smaller. To the extent that actual poverty guidelines are higher or lower than projected, the cost to the Government could be larger or smaller.

Simplified Utility Allowance—Section 4104

Discussion: This provision simplifies current rules relating to the standard utility allowance (SUA) when the State agency elects to make the SUA mandatory. The rule provides that State agencies which elect to make the SUA mandatory: (1) May provide an SUA that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs; and (2) must not prorate the SUA when a household shares living quarters with others. The rule also provides that in determining if a State agency's mandatory SUAs are cost neutral, the Department must not count any increase in cost that is due to providing an SUA that includes heating or cooling costs to residents of certain public housing units or to eliminating proration of the SUA for a household that shares living quarters and expenses with others.

Effect on Low-Income Households: This provision will increase the shelter deduction and raise food stamp benefits among low-income households in shared living arrangements and certain public housing situations to the extent they reside in States with mandatory SUA policies. This provision will decrease the shelter deduction and lower food stamp benefits among low-income households with high utility expenses to the extent that they reside in States who will adopt mandatory SUA policies as a result of this provision.

Cost Impact: We estimate that the cost to the Government of this provision will be $204 million in FY 2005, the first year it is expected to be fully implemented, and $980 million over the five years FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2005 budget baseline.

According to individual State SUA plans, there were 11 States with mandatory SUA policies in FY 2002. Based on participant data from the National Data Bank, those mandatory SUA States served 25 percent of food stamp participants in FY 2002. Telephone conversations with State officials regarding their SUA policy intentions indicated that this provision is motivating a large number of States to move to mandatory SUAs. Based on those conversations, we assumed that by FY 2005, 75 percent of the remaining States would adopt mandatory SUAs. The cost impact of this provision includes three components: (1) Increased costs due to ending the SUA proration requirements; (2) increased costs due to extending the full heating and cooling SUA to certain households in public housing with shared utility meters; and (3) savings from limiting households with high utility expenses to the SUA value among States adopting a mandatory SUA policy as a result of this provision.

The estimate was based on food stamp cost projections from the President's FY 2005 budget baseline of December 2003. While we recognize that the President's FY 2005 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision, it is preferable to the alternatives because it reflects the most recent economic and participation trends. The national cost impact of ending the proration requirement of the heating and cooling SUA was estimated using food stamp quality control data from FY 2002, the most recent data available. QC data includes information on household circumstances, income and expenses and allows us to identify which households are currently prorating their SUA. Using this data, we were able to calculate the change in each household's benefit as a result of changing the SUA proration rules and estimate a national percentage increase in benefits (1.509 percent). This percentage increase was multiplied by the baseline cost projections from the President's FY 2005 budget baseline for each year. Since this provision is available only to those households in States with mandatory SUA policies, the costs were adjusted to account for the proportion of food stamp participants subject to mandatory SUA policies. As outlined above, we estimated that 25 percent of food stamp participants were subject to mandatory SUA policies prior to enactment and are therefore affected by this provision. Because of the large number of States expressing their desire to adopt mandatory SUA policies, we assumed that 25 percent of participants in the remaining States would adopt mandatory SUAs in FY 2003, growing to 50 percent in FY 2004, up to 75 percent in FY 2005 and beyond. This assumption was supported by current data showing that in FY 2003, 19 States had adopted mandatory SUA policies. These States account for about 42 percent of participants in FY 2003.

The national cost impact of extending the full heating and cooling SUA to certain households in public housing with shared utility meters was based on participation projections from the President's FY 2005 budget baseline of December 2003. Participation figures were divided by the average household size of 2.32 persons to estimate the total number of food stamp households from the FNS report, *Characteristics of Food Stamp Households:* Fiscal Year 2002. Based on tabulations of 2002 quality control data, 39.2 percent of households reported positive utility expenses lower than their State's SUA. These are generally households who are claiming actual utility expenses rather than the SUA when determining their excess shelter expense deduction and are likely to be affected by this provision. Their average utility expenses were estimated as $109 and the average SUA value was $244. Based on data from the U.S. Department of Housing and Urban Development (HUD), about 8 percent of these households were assumed to live in public housing. Based on multiple conversations with officials from HUD, the U.S. Department of Energy, utility companies, and building associations, the proportion of those households with shared utility meters was assumed to be five percent. The national cost for the provision was then determined by multiplying the number of affected households (39.2 percent of the baseline number of households in each fiscal year) times the average difference in the utility expenses used for the shelter deduction ($244 less $109 = $135) times 12 months times a benefit reduction rate of 30 percent. The benefit reduction rate represents how much benefits change for each dollar change in the excess shelter deduction. Again, the national cost was then adjusted to reflect the proportion of food stamp participants subject to mandatory SUA policies and therefore affected by the provision—25 percent of participants at enactment with a phase-in up to 75 percent of participants in remaining States in FY 2005 and beyond.

The national savings impact of limiting households with high utility expenses to a mandatory SUA was simulated using the 1999 MATH SIPP simulation model, the most recent model available. This model was used because SIPP contains information on households characteristics, income and expenses, including the information about household utility expenses necessary to estimate changes in household benefits resulting from changes to their excess shelter expenses deduction value. The national impact of the provision was estimated as a percentage decrease (−0.836 percent). This percentage was multiplied by the baseline cost projections for each year and the product was adjusted to reflect the proportion of food stamp participants expected to be made newly subject to a mandatory SUA as a result of this provision (phased-in up to 75 percent of the remaining participants in FY 2005 and beyond).

The impacts of the three components were summed and rounded to the nearest million dollars.

Participation Impact: In FY 2005, the first year fully implemented, 2,145,000 persons are expected to gain an average of $12.72 per month in food stamp benefits as a result of this provision. In addition, 2,178,000 persons are expected to lose an average of $4.71per month in food stamp benefits, including 11,000 persons who will lose eligibility and no longer participate in the Food Stamp Program. The number of persons made newly eligible by this provision is expected to be minimal.

Participation effects were estimated using the same methodology as the cost estimate. The simulation results from quality control data and MATH SIPP produced participation impacts for those gaining benefits, losing benefits and losing eligibility for those affected by eliminating the SUA proration requirement and households with high utility expenses made newly subject to a mandatory SUA. The impacts, expressed as a percent change from the model's baselines, were multiplied by the participation projections in the President's FY 2005 budget baseline of December 2003, and were adjusted according to the methodology outlined for the cost estimate. The number of persons in households affected by the public housing component of the provision was estimated by taking the number of households affected times the average number of persons per household. The estimates from the individual components were then summed.

Uncertainty: The estimate of this provision has a moderate level of certainty. The analyses are largely based on the results of computer simulation models of large national datasets, which yield fairly precise estimates. Data on which States will choose to adopt this option is quite strong, as it is based on telephone conversations with every State and recent information about their policy choices. The weakest part of the estimate is assumption about the number of households in public housing with shared meters. Despite an extensive search, data on this subject were difficult to obtain. The assumption that 5 percent of families in public housing have shared meters is a best guess, but is fairly uncertain. To the extent that the actual number of households with shared meters is smaller or larger, costs to the Government of this provision would be lower or higher.

Simplified Determination of Deductions—Section 4106, and State Option To Reduce Reporting Requirements—Section 4109

Discussion: The provision of the rule implementing Section 4106 provides State agencies the option of disregarding until a household's next recertification any changes that affect the amount of deductions for which a household is eligible. However, the State agency must act on any change in a household's excess shelter cost stemming from a change in residence and any changes in the household's earned income. The rule provides: (1) The State agency has the option of ignoring changes (other than changes in earned income and changes in shelter costs related to a change in residence) for all deductions or for any particular deduction; (2) the State agency may ignore changes for deductions for certain categories of households while acting on changes for those same deductions for other types of households; and (3) the State agency may not act on changes in only one direction; *i.e.*, if it chooses to act on changes that increase a household's deduction, it must also act on changes that would decrease the deduction.

The provision of the rule implementing Section 4109 provides State agencies the option to extend simplified reporting procedures, which are restricted to households with earnings under current rules, to all food stamp households. The rule provides that (1) the State agency may include any household certified for at least 4 months within a simplified reporting system; (2) households exempt from periodic reporting, including homeless households and migrant and seasonal farm workers, may be subject to simplified reporting but may not be required to submit periodic reports; (3) the State agency may require other households subject to simplified reporting to submit periodic reports on their circumstances from once every 4 months up to once every 6 months; and (4) households subject to simplified reporting must report when their monthly gross income exceeds the monthly gross income limit for their household size.

Effect on Low-Income Families: Low-income families who reside in States who implement this option may be impacted by this provision. Changes in household circumstances may be disregarded for up to 6 months, relieving a reporting burden on households.

Cost impact: The cost to the Government of section 4106—simplified determination of deductions is included in the cost estimate of section 4109—simplified reporting. The cost to the Government in FY 2004 is expected to be $60 million. The five-year total for FY 2004 through FY 2008 is $447 million. These impacts are already incorporated into the President's FY 2005 budget baseline.

Section 4106 allows States to disregard changes in deduction amounts. The impact of this provision is assumed to be included in the cost of simplified reporting. Section 4109 extends the State option of simplified reporting to all households. In addition, FNS implemented a universal quarterly reporting system prior to passage of FSRIA. The details of these systems are similar enough that we took the estimated cost of universal quarterly reporting and multiplied by 2 (from 3 months to 6 months). We then subtracted out the cost to States already running a universal simplified reporting system by waiver and the States running a more limited simplified reporting system. Combined these States are Colorado, District of Columbia, Delaware, Georgia, Kentucky, Louisiana, Michigan, Maryland, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Ohio, Oklahoma, Tennessee, West Virginia, and Wyoming (from Food Stamp Program State Operations Report, April 4, 2002). Together they account for 31 percent of all benefit costs; we assumed by extension that they account for 31 percent of the cost of simplified reporting (based on FY 2003 issuance from the National Data Bank). We then applied a State phase-in assuming this proposal will be taken up quickly and by a majority of the States. We assumed 25 percent of States will implement in FY 2003, 50 percent in FY 2004, and 75 percent in the remaining years. This provision benefits all households who are placed in this reporting system by reducing the frequency of reports they must submit. On average, the benefit impact per person is 44 cents per person per month in fiscal year 2006 when fully effective.

Participation Impact: This provision only affects current participants in the States that opt to implement. There are no new participants brought onto the program from this provision.

Uncertainty: There is a moderate level of certainty associated with this estimate. This estimate is based on previous reporting estimates that use SIPP longitudinal data to track how much circumstances change because of the new reporting rules. Added to that data is other quality control data on how accurate reports are that has a high level of certainty as well. However, since two different data sources are used and other out-of-model adjustments are made (including how many States would implement this option), the uncertainty is raised some.

Transitional Food Stamps for Families Moving From Welfare—Section 4115

Discussion: This provision expands the current option to provide transitional benefits to households leaving the TANF program. The rule provides that State agencies: (1) May lengthen the maximum transitional period from up to three months to up to five months; (2) may extend the household's certification period beyond the limits established under current rules to provide the household with up to a full five months of transitional benefits; (3) must adjust the household's benefit in the transitional period to take into account the reduction in income due to the loss of TANF; (4) may further adjust the household's benefit in the transitional period to take into account changes in circumstances that it learns of from another program in which the household participates; (5) must permit the household to apply for recertification at any time during the transitional period; (6) may shorten the household's certification period in the final month of the transitional period and require the household to undergo recertification; and (7) must deny transitional benefits to households made ineligible for such benefits by law.

Effect on Low-Income Families: This provision impacts low-income families who leave TANF. If their State opts to provide transitional benefits, these families receive up to 5 months of transitional food stamps after they exit from TANF.

Cost Estimate: The cost to the Government of this provision in FY 2004 is $78 million, and it costs $446 million over the five years FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2005 budget baseline.

This estimate uses TANF baseline participation figures from the U.S. Department of Health and Human Services. We assumed only non-child-only cases would leave the TANF program and be eligible for a transitional food stamp benefit. Previous research found that about 65 percent of the caseload is non-child-only. After adjusting TANF participation figures to those that are non-child only (1.386 million families in FY 2004), we then applied a leaver's rate. This rate is based on previous state evaluations and averaged about 7.5 percent in 2001, which is lowered in each year by a constant rate of one third per year, because it was assumed that over time, fewer participants would leave either due to economic recession or due to severe personal difficulties making it very difficult to leave TANF. The leaver rate used in FY 2004 was 6.96 percent a month. We then adjusted for the percentage of TANF households who are not eligible for Food Stamp Program because of household definitional issues. For example, TANF excludes persons that are included by the Food Stamp Program, and their inclusion makes the household ineligible for food stamps. This has remained constant at about 20 percent for many years (from TANF Annual Report to Congress). We then adjusted for those cases sanctioned off of TANF or sanctioned in the Food Stamp Program. The statute states that these cases are ineligible for a transitional benefit. About 6.2 percent of TANF cases are sanctioned each year (data from TANF National Report to Congress). Administrative data shows about 2 percent of Food Stamp Program cases are closed because of intentional program violations. We rounded this 8.2 percent to 10 percent to account for other program sanctions. Therefore, another 10 percent of TANF leavers are ineligible for the 5-month transitional benefit. Finally, we assumed that about half of the TANF leavers have no financial changes other than the loss of the TANF income and therefore their transitional Food Stamp benefit is not dramatically different from what they would have received under normal program rules. We scored the cost of the remaining 52 percent whose food stamp benefit is higher than what the household would have received otherwise. Based on the 2000 TANF report to Congress, we estimated that in FY 2004 there are 36,000 leavers eligible for the transitional benefit. The average food stamp benefit for TANF households in FY 2000 was about $234 a month. However, the statute states that the Food Stamp Program benefit shall be adjusted due to the loss of TANF cash. The average TANF benefit was $302 a month in FY 2000, which an HHS official suggested was a good estimate of the TANF benefit just prior to leaving TANF. A $302 decrease in cash assistance produces a $97 increase in Food Stamp Program benefits. Therefore, we assigned a monthly transitional benefit for each leaver household of $330 in 2000. Inflated using the change in the thrifty food plan equals a $368 monthly benefit in 2004. This amount times the number of leavers produces the gross cost per month. The cost of the transitional period is 4 times this monthly cost. The current process results in an extra month of benefits so the five-month traditional benefit period results in four extra months of benefits. The annual cost is the product times 12 months. However, we know that leavers tend to churn, that is, return to the program shortly after leaving. In these cases, the cost is reduced because they return to the Food Stamp Program even in the absence of a transitional benefit. If the case returns in the first month, there is no additional savings since it takes one month to close a food stamp case normally. Returners in the second through fifth month, however, do generate savings. Data from the Department of Health and Human Services show that 5 percent of leavers return to TANF in the second month, 4 percent return in the third month, 3 percent return in the fourth month, and 2 percent return in the 5th month. After weighting these by the number of months transitional benefits would not be paid, we multiplied the percentage returning times the cost for the year. We then adjusted for the fact that some portion of the first year benefits will be paid in the second year. That is, if someone's transitional benefit starts in July; only 2 months of benefits will be paid in the first fiscal year. The remaining will be paid in the second fiscal year. We reduced the first year's cost by 17 percent to account for this. We then reduced the cost to avoid double counting what is already in the baseline (since States have been operating a 3 month transitional benefit).

Prior to the passage of FSRIA, some States had been operating a three-month transitional benefit option that FNS allowed via regulation. We assumed these States would move to the five-month option. The full cost of the three-month option was subtracted from the full cost of the five-month option to get the additional, or new, spending due to the legislative change.

Finally, we applied a State phase-in rate believing that this provision will be slowly implemented by States and that only a small portion of States will ever implement. Therefore, we took 10 percent of the cost in the first year, 20 percent in the second year, and 20 percent in the remaining years.

Participation Impact: We estimate that in FY 2004, an average of 36,000 TANF-leavers will receive the food stamp transitional benefit per month.

Uncertainty: There is a high level of uncertainty with this estimate. The estimate is based on projections of TANF participation over a ten-year period and studies done in only a few states about the behaviors of certain types of TANF leavers. In conjunction with OMB and HHS, these studies represented the best information available, although not necessarily nationally representative. Added to that is the state take-up rate, indicating how many States would take this option, which is highly uncertain and variable as time goes on.

Section 4401: Restoration of Benefits to Legal Immigrants

Discussion: This provision substantially expands eligibility for the Food Stamp Program for legal immigrants. It restores eligibility to three groups of legal immigrants in three stages. Effective October 1, 2002, legal immigrants who receive blindness or disability benefits became eligible to participate in the Food Stamp Program. Effective April 1, 2003, legal immigrants who have resided for at least five years in the United States as qualified aliens became eligible. Effective October 1, 2003, all legal immigrants under age 18 became eligible for benefits, regardless of when they first arrived in the United States. The statute and rule also remove sponsor deeming requirements for immigrant children.

Effect on Low-Income Households: These three provisions will affect low-income families who have legal immigrant members who are currently ineligible for benefits but become eligible after the provisions take effect. Many of these households contain U.S. born children who are currently eligible for food stamps but may not be participating. Most households that contain participating U.S. born children will receive larger benefits if the adults become eligible for benefits. Other households will consist entirely of newly eligible persons.

The people benefiting from the provision restoring eligibility to immigrants with five years legal residency are mostly living in households with children. About half of new participants live in households with earnings. Households with elderly and disabled are less likely to be affected, since elderly and disabled who were legally resident before August 22, 1996 are eligible under current law. In addition, a few legal immigrants receiving State-funded disability payments qualify for restored food stamp eligibility on the basis of receiving blindness or disability benefits; legal immigrants have not had eligibility for federal disability benefits restored. Lastly, foreign-born children who have legally resided in the United States for less than five years benefited from the provision restoring eligibility to children effective October 1, 2003.

Cost Impact: We estimate that the cost to the Government of all three provisions will be $185 million in FY 2004 and $1.829 billion over the five-year period of 2004–2008. The cost to the Government of restoring eligibility to disabled immigrants is $3 million for FY 2004 and $19 million over the five-year period of 2004–2008. The bulk of the cost is from restoring eligibility to those legally resident in the United States for five years; the FY 2004 cost to the Government is $160 million and $1.522 billion over five years. The cost to the Government for restoring eligibility to legal resident children regardless of date of arrival in the United States is $22 million for FY 2004 and $288 million over the five-year period.

We estimated that a relatively small number of legal immigrants qualified for the October 1, 2002 restoration of benefits to the blind and disabled. This is because federal programs providing blindness or disability benefits to most legal immigrants are restricted to those who either were residing in the United States prior to August 22, 1996 (Supplemental Security Income) or have a significant work history (Social Security benefits). Both groups are currently eligible for food stamps. Only those participating in State-funded disability programs qualified for the October 1, 2002 restoration of food stamps. Some data from an Urban Institute study on the impact and implementation of these provisions indicates that of the eight States studied (California, Florida, Illinois, Massachusetts, New Jersey, North Carolina, Tennessee, and Texas), three of these States provided State-funded disability programs for immigrants. These three States (California, Massachusetts, and Texas) estimated that they restored benefits to 2,400 disabled immigrants. If one assumes that their average monthly benefit is similar to that of a person receiving General Assistance benefits, the cost for 2004 is $3 million. The five-year cost is $19 million for 2004–2008. There is no phase-in, because States providing State-funded disability payments to disabled aliens converted these immigrants to food stamps immediately after they became eligible.

The estimates for the other two provisions were based on food stamp cost projections from the President's FY 2005 budget baseline of December 2003.

The estimate for restoring eligibility to those with five years legal residency in the United States is based on a model that uses a combination of quality control data on participating legal immigrants from 1996 (prior to their restricted eligibility) with data on current participants and program rules for 2000. Based on this model, restoration of food stamp eligibility to those with five years' legal residency will increase benefit costs by 1.23 percent, for a total cost of $299 million in 2004.

However, because the estimate is based on 2000 data and program rules, we made the following adjustments:

- The model only restores eligibility to those in the United States prior to 1996, because in order to have five years legal residency in 2000, an immigrant will need to have arrived no later than 1995. However, by 2004, people with five years residency will include those arriving in 1996, 1997, 1998, and 1999. By 2006, people with five years residency will also include those arriving in 2000, and 2001.
- Based on admissions data from the INS, we estimate that in 2004, 7.91 percent of noncitizens with five years legal residency will have arrived by 1996. Thus, the cost and number of new participants is adjusted upwards to account for the 1996 arrival cohort not captured under the model. With the adjustment, the cost is $323 million in 2004.
- Based on admissions data from the INS, we estimate that in 2004, 15 percent of noncitizens with five years legal residency will have arrived in 1997, 1998, and 1999. By 2007, the percentage of post August 22, 1996 arrivals with five years residency will rise to 25 percent. These percentages are for non-aged, non-disabled adults; the model does not restore eligibility to any elderly, disabled, or children, since in 2000, all members from these groups who had five years residency would have been covered by the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA) restorations. So we have to further adjust the percentage of post 1996 arrivals to include elderly, children, and those adults who would have qualified for federal disability payments using the pre-August 22, 1996 rules but are not currently eligible for those payments to become food stamp eligible on October 1, 2002. Since about 24 percent of all legal immigrants who received food stamps in 1996 were elderly, disabled, or children, the increase in costs accounting for post-1996 arrivals is estimated to be 18 percent in 2004 and 35 percent in 2008. With the adjustment, the cost is estimated to be $384 million in 2004.
- We also expect that more legal immigrants will naturalize over the next few years. Based on estimates provided by the INS, we estimate that in 2004, an additional 16 percent of immigrants will naturalize relative to 2000. The estimate for 2008 is 20 percent. This adjustment reduces the cost of the restoration because naturalized citizens are eligible for food stamps even without implementation of this provision. Thus,

the cost estimate is adjusted downwards, to $320 in 2004.

• We also phased in the impact over three years, because we expect it to take three years for the full participation impact to be realized. Finally, we halved the cost impact for 2003, since the provision takes effect on April 1, 2003, halfway through the Fiscal Year. After these adjustments, the expected benefit cost for FY 2004 is $160 million.

We also estimated the impact of restoring only those children who had been in the country less than five years, since children with more than five years legal residency would be covered by the previous provision. The model estimated that this restoration would increase annual food stamp costs by 0.22 percent. We then multiplied the impact by the expected annual food stamp costs for each year as projected in the President's FY 2005 budget baseline of December 2003. We then made the following adjustments:

• The model only restores eligibility to children arriving in 1997, 1998, and 1999, since it is based on FY 2000 data and children arriving prior to 1997 were made eligible under AREERA. Assuming that the number of children arriving legally in the United States in 2000 and 2001 is proportional to those arriving in the prior three years, we increased the impact by 67 percent (five years divided by three years = 1.67).

• We also assumed a lower participation rate among newly eligible children, since their immigrant parents would not be eligible to receive benefits for five years. We assumed the participation rate would be seventy-five percent.

• We made a further adjustment because California provides a State-funded benefit for ineligible immigrants. When calculating the Federal portion of the benefits issued by legal immigrants, California excludes the entire income of ineligible aliens, rather than pro-rating a portion to the eligible household members. This adjustment is a ten percent reduction in costs.

• The estimate for children does not include any children with more than five years' residency. However, five years' residency is required to become a United States citizen. Thus, the estimate for this provision does not contain any adjustment for naturalization.

• Finally, we assumed a three-year phase-in before the impact was fully realized. The expected cost to the Government for FY 2004 (the first year of implementation) is $22 million.

The impacts of the three components were summed and rounded to the nearest million dollars.

Participation Impact: We estimate that by 2006, when the provision will be in full effect, an additional 513,000 legal immigrants will be participating in the Food Stamp Program. Some will be people currently covered by State-funded food assistance benefits. Some others will be individuals who live in a household with participating citizen children. Others will live in households where no one currently participates in the program.

We estimate that the provision that restores eligibility to those with five years legal residence in the United States will bring an estimated 437,000 legal immigrants on to the program by full implementation in fiscal year 2006. The average per-person monthly benefit in 2006 will be an estimated $66. We estimate that the provision that restores eligibility to legal resident children will bring an additional 63,000 persons onto the Food Stamp Program by 2006. The average per-person monthly benefit in 2006 will be $75. In addition, we estimate that about 3,000 legal immigrants will qualify for the restoration of benefits to the blind and disabled in FY 2006.

Participation Impact: Participation effects were estimated using the same methodology as the cost estimate. The simulation results of the QC Minimodel produced participation impacts. The impacts were multiplied by the participation projections for the FY 2005 President's budget baseline and were adjusted according to the methodology outlined for the cost estimate.

Uncertainty: The estimates for restoring eligibility to immigrants with five years legal residency and for restoring eligibility to legal non-citizen children both have a moderate degree of uncertainty. The primary source of uncertainty for the first provision is the percent of legal residents who meet the five-year residency test, since the QC data does not contain that information, and we have to impute it from other data sources. This issue also affects the estimate for children, since children meeting the five-year residency would become eligible under the five-year residency provision (which was implemented earlier) rather than the child provision. The other source of uncertainty, which applies to both groups, is the take-up rate among this group. The estimate for restoring eligibility to disabled people has a higher degree of uncertainty because data is based on a study of only eight States.

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). Eric M. Bost, the Under Secretary for Food, Nutrition and Consumer Services, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local human services agencies will be the most affected to the extent that they administer the Food Stamp Program.

Public Law 104–4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, 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.

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 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because the Food Stamp 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 regarding program implementation and policy issues. This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other Food Stamp rules. In addition, we held three conferences with representatives of the State agencies specifically to discuss the provisions of FSRIA being implemented through this rule. Dates and locations of the meetings were as follows: June 11, 2002, in Alexandria, Virginia; June 13–14, 2002, in Kennebunkport, Maine; and June 17–19, 2002, in Dallas, Texas. We have also received written requests for policy guidance on the implications of FSRIA from the State agencies that deliver food stamp services. These questions have helped us make the rule responsive to concerns presented by State agencies.

Nature of Concerns and the Need To Issue This Rule

This rule implements changes required by the FSRIA. There are no purely discretionary provisions contained in this rule. State agencies generally want simplification of program eligibility and certification requirements. The proposed rule provides simplification by implementing statutory options which, among other things, reduce household reporting requirements, simplify the definition of income, and simplify the determination of deductions. Specific policy questions raised by State agencies after enactment of FSRIA, but prior to the promulgation of regulations, helped us identify issues that needed to be clarified in the proposed rule.

Extent to Which We Meet Those Concerns

FNS has considered the impact of the proposed rule on State and local agencies. This rule makes changes that are required by law. All of the provisions of FSRIA addressed in this rule, except Section 4401, were effective on October 1, 2002. Section 4401 has 3 different implementation dates. The provision restoring food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry was effective on October 1, 2002. The provision restoring food stamp eligibility to qualified aliens who are otherwise eligible and who have lived in the United States for 5 years as qualified aliens beginning on date of entry was effective April 1, 2003. The provision restoring food stamp eligibility to qualified aliens who are otherwise eligible and who are under 18 regardless of date of entry and the provision eliminating the sponsor deeming requirements for immigrant children are both effective October 1, 2003.

Some of the provisions of this rule are mandatory, but the effects of the mandatory provisions on State agencies are minimal. The rule changes the method used to calculate the program's standard deduction, but this change has had minimal effect on State agencies. To implement the provision, State agencies reprogrammed their computer systems to assign standard deduction amounts by household size and must update these amounts annually. FNS will annually calculate the deduction amounts and share them with States. The rule requires State agencies that maintain a Web site to make their State food stamp application available on that Web site in each language in which the State agency makes a printed application available. In posting applications on their Web pages, State agencies must comply with Section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794, which requires State agencies to make their Web sites accessible to people with disabilities. However, since many States have already adopted standards that comply with the requirements of Section 504, they should not incur additional costs to put their food stamp application forms on their Web sites. The rule also restores food stamp eligibility to certain qualified aliens and eliminates the sponsor deeming requirements for immigrant children. The remaining provisions of this rule are optional and provide State agencies the flexibility to simplify some program eligibility and certification requirements.

In the proposed rule, we have addressed questions submitted by State agencies regarding the provisions of FSRIA implemented in this rule. FNS is not aware of any case where the discretionary provisions of the rule would preempt State law. FNS has attempted to write this regulation to provide States with maximum flexibility in implementing the provisions.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Date paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) of the Food Stamp Act and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 of the Food Stamp Act and regulations at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the Food Stamp Act (7 U.S.C. 2023) and 7 CFR 278.8.

Civil Rights Impact Analysis

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

In general, 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 Food Stamp Program from engaging in actions that discriminate based on race, color, national origin, sex, religion, 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.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), this proposed rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule. The information collections affected by this rule are (1) OMB Number 0584–0064: Application and Certification of Food Stamp Households; (2) OMB Number 0584–0496: State Agency Options; and (3) OMB Number 0584–0083: Operating Guidelines, Forms and Waivers.

Comments on this information collection must be received by June 15, 2004.

Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Katherine Astrich, Desk Officer for FNS, Washington, DC, 20503. Comments may be e-mailed to Ms. Astrich at *KAstrich@omb.eop.gov.* Please also send a copy of your comments to Matthew Crispino, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 800, Alexandria, Virginia 22302, (703) 305–2407, or by fax to (703) 305–2486, or by e-mail at *fsphq-web@fns.usda.gov.* For further information, or for copies of the information collection, please contact Mr. Crispino at the above address.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Request 1

Title: Application and Certification of Food Stamp Households.

OMB Number: 0584–0064.

Expiration Date: January 31, 2006.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7, Part 273 of the Code of Federal Regulations (CFR) sets forth the Food Stamp Program requirements for the application, certification and continued eligibility for food stamp benefits. This rulemaking revises the collection burden to account for changes required by FSRIA.

Food Stamp applications on State Web sites. FSRIA requires every State agency that maintains a Web site to make its food stamp application available on the Web site in each language that a printed copy is available. State agencies are not required to accept applications on-line.

State agency burden: Because States already have to develop applications, and all States already maintain Web sites, we anticipate that States will only incur a start-up burden to post their applications on the Web.

Household burden: This requirement provides another manner in which households are able to obtain an application. There would be no additional burden for households.

Start-up burden: We estimate a start-up burden for the requirement that State agencies place their food stamp applications on their Web sites in each language that paper applications are made available. We estimate a burden of 1.5 hours for a State agency to post its application(s) on the Web. States are required to have their applications posted by November 13, 2003. We estimate a total burden of 80 hours (53 State agencies × 1.5 hours = 80 hours).

Determination of child support payments. Households that pay legally owed child support are eligible for either an exclusion or deduction of those payments. FSRIA allows State agencies to rely solely on information from the State's Child Support Enforcement (CSE) agency in determining a household's obligation and actual child support payments. The household would not have further reporting and verification requirements.

State agency burden: This provision was intended as a simplification for States to rely solely on information from the Child Support Enforcement (CSE) agency in determining the amount of child support payments made. While the State agency will use CSE data, it will not have to perform other verification activities for payments reported by the household. We expect that most States already have a link with the CSE agency. Therefore, there would be no additional burden to set up an interface with the CSE agency. However, we estimate that modifying instructions to workers regarding the new process to determine child support payments will result in a burden of 20 hours per State agency. We anticipate five State agencies in each of the next three years will choose this option, resulting in a total of 100 burden hours annually (5 States × 20 hours = 100 hours).

Household burden: This provision may reduce the reporting burden for households, because the State agency will rely on the information from the CSE agency instead of requiring additional verification from the household. We estimate that households spend an average of 19 minutes completing an application for initial certification or recertification. Given that only one percent of households received this deduction in fiscal year 2001 (and even fewer will be subject to the new requirement since it is a State option), the average time to complete an application will not be measurably affected. Therefore, we do not estimate a change in household burden from this provision.

Notification on reporting forms if State chooses to disregard changes in deductions. States are given the option in FSRIA to postpone acting on changes that would change the amount of deductions, except for changes in shelter expenses due to a change in residence and changes in earned income. If the State chooses this option, it must include a notice on all report forms that any reported changes that affect deductions will not be acted on until the household's next recertification.

State agency burden: The notification would be added to a State's existing reporting forms, so this option would not impose an additional burden for creating or sending a new notice. However, States that choose this option would have to revise their reporting forms to include notification about postponing changes in deductions. We estimate that modifying existing report forms will result in a burden of 20 hours per State agency. We anticipate five States in each of the next three years will choose this option, creating a burden of 100 hours annually (5 States × 20 hours = 100 hours).

Household burden: FNS believes there is no burden to the household for this provision.

Transition notice. FSRIA added an option for States to provide transitional benefits to families leaving the Temporary Assistance for Needy Families (TANF) program. This addition changed the transitional benefit alternative provided through the regulations under the final rule on Noncitizen Eligibility and Certification Provisions of Pub. L. 104–193, as Amended by Public Laws 104–208, 105–33 and 105–185 (NCEP) (65 FR 70134 (November 21, 2000)). The proposed rule includes new requirements for the Transition Notice that States must provide to households receiving transitional benefits.

Families leaving TANF receive a "Transition Notice" (TN) from the State agency advising the household that it will be receiving transitional benefits and the length of the transitional period. The TN must inform the household that it has the option to apply for recertification at any time during the transitional period; otherwise at the end of the transitional period, the household's circumstances will be reevaluated or the household will have to be recertified. The notice must also explain any changes in the household's benefit, and inform the household that if it returns to TANF during the period, the State agency will reevaluate the household's circumstances or require the household to undergo a recertification. Finally, the TN must inform the household that it does not have to report changes during the transitional period. If the State agency opts not to act on changes during the transitional period, the TN must tell households that if they experience a change that would increase benefits, the household should apply for recertification.

State agency burden: Since there is no difference in how the Notice of Expiration (NOE) and the Transition Notice (TN) are handled, and the TN will replace the NOE in some cases, the burden for the TN will be considered minimal and therefore will be incorporated into the NOE burden calculations. We do anticipate a burden of 20 hours per State agency for developing the TN. This burden would include the States that currently provide transitional benefits, because the proposed rule would require substantial changes to the current TN. We anticipate 5 State agencies will choose to implement the option in each of the next three years, therefore creating a burden of 100 hours each year (5 × 20 hours = 100 hours).

Household burden: FNS believes there is no burden to the household for this provision.

Simplified reporting option. Since the NECP rule, State agencies have had the option to require households with earnings to submit reports of their circumstances every six months. In addition, a household must report when its gross income exceeds 130 percent of the poverty threshold. FSRIA extends this option to most households (a few categories of households are prohibited by law from being required to submit periodic reports). This change means more households will only have to submit one report every six months, as opposed to reporting every month, quarter, or whenever their circumstances change. The State agency would also have fewer reports to process, although we estimate that processing the semi-annual report is more time consuming than processing a change report. States may have fewer recertifications to process if they extend the certification period for households in semi-annual reporting. Processing the six-month report is less time consuming than processing a complete recertification.

State agency burden: Implementing simplified reporting reduces a State's burden in processing reports. Simplified reporting typically requires a household to report once every six months, and also when the household's gross income exceeds 130 percent of the poverty level (the gross income threshold). This means that States choosing this option will have fewer household reports to process.

The NECP rule provided an option to provide simplified reporting to households with earnings. The proposed rule allows States to extend simplified reporting to most households, with an option to require reports once every four to six months. Based on a recent survey of State choices, we estimate that 1,703,806 households will be newly subject to the expanded simplified reporting option. Of these households, we assume 114,859 would otherwise have been subject to quarterly reporting, and 1,588,947 would have been subject to change reporting requirements. Under simplified reporting, all of these households will have to submit one report annually (these households will have to submit an application for recertification at least once every 12 months), and we estimate the State agency will spend 19 minutes processing each report for a total of 539,539 burden hours (1,703,806 reports × 19 minutes/60 minutes per hour = 539,539 hours). Quarterly reporting households submit 3 reports annually and we estimate change reporting households submit an average of 3.5 reports annually. We estimate the State agency spends 19 minutes processing each quarterly report and 5 minutes processing each change report. So if these simplified reporting households were instead subject to change or quarterly reporting, the State agency would have a total burden of 572,559 hours [(114,859 quarterly reporting households × 3 reports × 19 minutes/60 minutes per hours = 109,116 hours) + (1,588,947 change reporting households × 3.5 reports × 5 minutes/60 minutes per hour = 463,443 hours) = 572,559 hours]. This results in a net savings of 33,020 burden hours (539,539 hours − 572,559 hours = −33,020 hours) for implementing the expanded simplified reporting option in the proposed rule.

Household burden: This provision will also reduce the burden on households, since certain households in States that choose this option will have fewer reports to file with the food stamp agency. As noted above, we estimate 1,703,806 households will be subject to simplified reporting due to the proposed rule. We estimate that households will spend 7 minutes completing a semi-annual or quarterly report and 5 minutes completing a change report. Households subject to the new semi-annual report will have a burden of 198,777 hours (1,703,806 reports × 7 minutes/60 minutes per hour = 198,777 hours). We estimate these households would have a total burden of 503,644 hours under quarterly or change reporting [(114,859 quarterly reporting households × 3 reports × 7 minutes/60 minutes per hour = 40,201 hours) + (1,588,947 change reporting households × 3.5 reports × 5 minutes/60 minutes per hour = 463,443 hours) = 503,644 hours]. This results in a net savings of 304,866 burden hours (198,777 hours − 503,644 hours = −304,866 hours).

Record keeping burden only: Local agencies are required to maintain client case records for three years and to perform duplicate participation checks on individual household members to ensure the member is not participating in more than one household.

Data are not available on the actual number of local food stamp offices in each State or the actual number of workers (recordkeepers) that would be maintaining case files and performing duplicate participation checks. For the purpose of this burden package, we are using the number of food stamp project areas, which equals 2,715.

(A) *Case Files*: The caseload to be maintained is equal to the number of participating households and their subsequent files. The number of times recordkeepers must access these case files is equal to the number of documents expected to be filed or noted in the file annually. We anticipate minimal filing to involve a burden of 2 minutes per document. Including documentation (*i.e.* electronic files, caseworker written entry into the file, or hard copies of the document) for notices which were sent to the household and when, we anticipate a total of 109,883,314 documents/year. Annual record keeping burden associated with creating, filing, and maintaining household case files is estimated to be 3,662,777 burden hours (109,883,314 × 2/60 = 3,662,777).

This represents a decline in burden hours from the previous submission (113,319,113 records and 3,777,303 burden hours). Although the base assumptions of the number of applicants and recipients are higher than the previous submission, we were double counting records of the Notice of Expiration (NOE) and the Transition Notice (TN). As noted above, the TN will replace the NOE for certain households. However, our previous spreadsheet had an NOE and a TN for each household, resulting in an additional 243,015 burden hours.

(B) *Monitoring Duplicate Participation*: The estimated annual record keeping burden for maintaining this system that is automated by most States is based on the number of total applications (all approved and denied initial and recertification applications) expected to be received (20,556,015) and the average number of persons (2.3) in each applicant household. Assuming that at least 80 percent of the applications will be subject to this check, the estimated number of duplicate participation checks (responses) that must be performed by State agencies is 37,823,068. Burden is estimated to be 15 seconds (or 0.00416666 hour) per response, for a total burden of 157,596 burden hours annually (20,556,015 × 2.3 × .80 × .25/60). This is an increase of 6,498 burden hours from our previous submission of 151,098 burden hours.

(C) Total record keeping burden would be 3,820,373 hours. Burden per recordkeeper would be 1,407 hours.

Summary of burden hours for public—state and local governments, potential applicants, and current participants:

Respondents: 20,556,015.

Annual responses: 157,216,781.

Total burden hours: 29,994,434.

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Reporting Burden

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
Household Members	Initial application data collection	2,577,595	2,874,030
	Recertification data collection	3,164,141	3,635,375
	Monthly reports data collection	901,549	853,806
	Quarterly reports data collection	910,308	260,860
	Semi-annual reports data collection	0	241,887
	Change reports data collection	556,450	357,203
	Response to notice of missed interview	302,197	342,600
	Response to determination of indigence	0	0
	Response to face-to-face waiver	0	0
	Notification that TANF does not apply	0	0
	Transitional Notice (TN)	0	0
	Response to request for contact (RFC)	158,986	102,058
	SUBTOTAL	8,110,044	8,667,819
State agency Clerks or Eligibility Staff	Initial application processing	4,883,864	5,445,531
	Recertification application processing	5,995,215	6,888,076
	Monthly reports processing	2,447,063	2,317,472
	Quarterly reports processing	2,470,837	708,051
	Semi-annual reports processing	0	656,550
	Change reports processing	556,450	357,203
	Notice of eligibility, denial or pending	604,393	685,201
	Notice of late/incomplete monthly reports	1,171	1,109
	Adequate notice to monthly reporters	7,025	6,653
	Notice of adverse action (NOAA)	31,797	20,412
	Notice of expiration (NOE)	243,015	273,182
	Request for Contact (RFC)	31,797	20,412
	Transitional Notice (TN)	0	100
	Notice of Missed Interview (NOMI)	5,037	5,710
	Determination of indigence	83	100
	Notification of waiving face-to-face	50,366	57,100
	Notification that TANF does not apply	50,366	57,100
	State responsibility for misfiled applications	6,000	6,000
	State applications on website	0	80
	Determining child support payments	0	100
	Notice about deduction freeze	0	100
	Subtotal	17,384,480	17,506,242
	TOTAL REPORTING BURDEN	25,494,524	26,174,061

Recordkeeping Burden:

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
	Maintaining case files	3,777,304	3,662,777
	Monitoring duplication	151,098	157,596
	TOTAL RECORDKEEPING BURDEN	3,928,402	3,820,373

Total Burden:

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
	Reporting Burden	25,494,524	26,174,061
	Recordkeeping Burden	3,928,402	3,820,373
	TOTAL BURDEN HOURS	29,422,927	29,994,434

BILLING CODE 3410–30–C

Request 2

Title: State Agency Options.

OMB Number: 0584–0496.

Expiration Date: September 30, 2004.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7, Part 273 of the Code of Federal Regulations (CFR) sets forth the Food Stamp Program requirements for the application, certification and continued eligibility for food stamp benefits. This rulemaking revises the collection burden to account for changes required by FSRIA.

Homeless shelter estimate. Section 273.9(d)(6)(i) of the regulations, as proposed to be amended, allows State agencies to use a homeless shelter deduction. State agencies will no longer need to collect information on shelter costs for homeless households. The previous version of the regulation allowed State agencies to use a homeless shelter deduction of up to $143 a month. FSRIA requires that State agencies choosing to use the homeless shelter deduction must set the deduction at $143 monthly.

Estimates of burden: The previous burden package estimated 1 hour per year for States that had chosen this option to conduct periodic reviews. Because the deduction is now set at a standard $143, there will be no burden for States that choose this option. This represents a change of 20 hours per year from what we anticipated in the previous information collection burden (ICB) calculations.

Establishing and reviewing standard utility allowances. Section 273.9(d)(6)(iii)(B) of the regulations allows State agencies to establish standard utility allowances (SUA) and once established requires State agencies to review and adjust SUAs annually to reflect changes in the cost of utilities. Many State agencies already have one or more approved standards, which they update annually. State agencies may use information already available from case files, quality control reviews or other sources and from utility companies. State agencies may make adjustments based on cost-of-living increases. The information will be used to establish standards to be used in place of actual utility costs in the computation of the excess shelter deduction. State agencies are required to submit the amounts of these standards and methodologies used in developing and updating the standards to FNS when they are developed or changed.

Estimates of burden: Currently 52 State agencies have a standard that includes heating or cooling costs and 31 have a standard for utility costs other than heating or cooling. In addition, 44 State agencies have a telephone allowance standard. State agencies are required to review the standards yearly to determine if increases are needed due to the cost of living. We estimate a minimum of 2.5 hours annually to make this review and adjustment (2.5 hours × 52 State agencies = 130 hours). Total burden for this provision is estimated to be 130 hours per year.

Mandatory utility standards. Section 273.9(d)(6)(iii) of the regulations, as proposed to be amended, allows State agencies to mandate use of standard utility allowances when the excess shelter cost deduction is computed instead of allowing households to claim actual utility costs provided the standards will not increase program costs. State agencies may establish additional standards to implement this provision. They must show that mandatory utility standards will not increase program costs. Request for FNS approval to use a standard for a single utility must include the cost figures upon which the standard is based. If the State wants to mandate use of utility standards but does not want individual standards for each utility, the State needs to submit information showing the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard and the average cost of their actual utility costs now plus the standards that State proposes to use and an explanation of how they were computed. If the State does not have actual data, it will need to pull a sample of cases to obtain it.

Estimates of burden: Currently, nineteen (19) State agencies selected to mandate the use of standard utility allowances. We do expect that additional states will decide to implement a mandatory SUA. There is not an additional burden in developing the standards since these agencies already calculate the standard utility allowance. Therefore, since there is no additional burden, the total annual burden associated with mandatory utility standards is zero.

Self-employment costs. Section 273.11(b) of the regulations allows self-employment gross income to be reduced by the cost of producing such income. The regulations allow the State agencies, with approval from FNS, to establish the methodology for offsetting the costs of producing self-employment income, as long as the procedure does not increase Program costs. State agencies may submit a request to FNS to use a method of producing a reasonable estimate of the costs of producing self-employment income in lieu of calculating the actual costs for each household with such income. Different methods may be proposed for different types of self-employment. The proposal shall include a description of the proposed method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase program costs. State agencies may collect this data from household case records or other sources that may be available.

Estimates of burden: We estimate that 10 State agencies will submit a request of this type each year for the next three years. It is estimated that these States will incur a one-time burden of at least 10 working hours gathering and analyzing data, developing the methodology, determining the cost implication, and submitting a request to FNS for a total burden of 100 hours annually. State agencies are not required to periodically review their approved methodologies. We do not anticipate that State agencies will voluntarily review their methodologies for change on a regular basis, thus burden is not being assessed for this purpose at this time.

Record keeping burden only: Each State agency would be required to keep a record of the information gathered and submitted to FNS. We estimate this to be 7 minutes per year for the 53 State agencies to equal a total of 6 burden hours annually. (53 × 7 minutes/60 minutes per hour = 6 hours annual burden)

Summary of burden hours for public—state and local governments, potential applicants, and current participants:

Respondents: 53.

Annual responses: 115.

Total burden hours: 236.

Reporting Burden:

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
State Agency	Homeless shelter estimate	20	0
	Establishing and reviewing SUAs	130	130
	Mandatory SUAs	0	0
	Self-employment costs	100	100
	TOTAL REPORTING BURDEN	250	230

Recordkeeping Burden:

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
	TOTAL RECORDKEEPING BURDEN	6	6

Total Burden:

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
	Reporting Burden	250	230
	Recordkeeping Burden	6	6
	TOTAL BURDEN HOURS	256	236

Request 3

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Expiration Date: September 2004.

Type of Request: Revision of a currently approved collection.

Abstract: The regulations at 7 CFR 272.2 require that State agencies plan and budget program operations and establish objectives for each year. State agencies submit these plans to the regional offices for review and approval. This rulemaking is proposing to amend 7 CFR 272.2(d) of the Food Stamp Program Regulations to require State agencies that opt to implement certain provisions of FSRIA to include these options in the State Plan of Operation. The optional provisions that must be included in the State Plan of Operation are: simplified definition of resources, simplified definition of income, optional child support deduction, homeless household shelter deduction, simplified reporting, simplified determination of deductions, and transitional benefits. The regulations at 7 CFR 272.2(f) require that State agencies only have to provide FNS with changes to these plans as they occur. Since these options are newly provided for by FSRIA, State agencies that choose these options must include them in their State Plan of Operations this year, and any subsequent year only if there are changes.

Estimates of burden: 35 States have adopted simplified reporting; 10 states have adopted transitional benefits; 22 States have adopted simplified definition of income; 19 States have adopted simplified definition of resources; 25 States have adopted the homeless household deduction; 4 States have adopted the option to simplify determination of deductions; and 6 states have chosen to treat legally obligated child support payments made to non-household members as an income exclusion while the remaining 47 States will continue to count the payments as a deduction. We estimate an average burden of one response per State agency per option selected over three years. The additional public reporting burden for this proposed collection of information is estimated to average an additional .25 hours per response. The total burden for this proposed collection is 42 hours.

Summary of burden hours for public—state and local governments, potential applicants, and current participants:

Respondents: 53.

Annual responses: 168.

Total burden hours: 42.

Reporting Burden:

ANNUALIZED BURDEN	Activity	Current Total Hours	Proposed Total Hours
State Agency	State Plan Amendments	8.5	50.5
	TOTAL REPORTING BURDEN	8.5	50.5

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies to provide the public the option of submitting or transmitting business electronically to the maximum extent possible.

Background

The Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, approved on May 13, 2002, amended the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.* (the Act), by establishing new eligibility and certification requirements for the receipt of food stamps. This rulemaking addresses 11 sections of FSRIA. State agencies were required to implement most of these provisions on October 1, 2002. The requirements of each provision are discussed below.

Availability of Food Stamp Program Applications on the Internet—7 CFR 273.2(c)

Section 11(e)(2)(B)(ii) of the Act (7 U.S.C. 2020(e)(2)(B)(ii)) requires State agencies to develop a food stamp program application. Section 4114 of FSRIA amends Section 11(e)(2)(b)(ii) to require that State agencies which maintain a web site make their State food stamp application available on that web site in each language in which the State agency makes a printed application available. The Department is proposing to amend current regulations at 7 CFR 273.2(c)(3) to implement this provision.

The Department believes that the purpose of this provision is to allow households to obtain a food stamp application without having to visit or contact their local food stamp office. Thus, the application posted on the web page must be a complete application; *i.e.*, it must be the same application that the household would receive if it picked up the application at the local office or had the application mailed to it. The State agency must provide on the web page the addresses and phone numbers of all State food stamp offices and a statement that the household should return the application form to its nearest local office. Section 4114 does not require that State agencies accept applications through the Internet, only that applications be made available online.

State agencies should format the application appearing on the web page so that the household can easily print and complete the application. In addition, in posting food stamp applications on their web pages, State agencies must comply with Section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794. Section 504 eliminates discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. To be in compliance with Section 504, State agencies must make their food stamp websites accessible to persons with disabilities. The Conference Report accompanying FSRIA, H.R. Conf. Rep. No. 107–424, at 541 (2002) (the Conference Report), refers to Section 504, noting that compliance with it requires that State agencies ensure that documents on a State's web page are in a format in which browsers for the visually impaired can read them, and that they can be converted to Braille documents; that graphic elements that convey meaning have text explanations available; and that English language text is also available in other languages, as appropriate. The Conference Report also notes that because many States have already adopted standards that comply with the requirements of Section 504, the requirement to comply with Section 504 when putting applications on their web sites should not impose additional costs on them. The Department is proposing to include a reference to Section 504 of the Rehabilitation Act in revised 7 CFR 273.2(c)(3).

Partial Restoration of Benefits to Legal Immigrants-7 CFR 273.4

1. Expanded Eligibility for Certain Noncitizens.

Section 4401 of FSRIA substantially expands eligibility for the Food Stamp Program for legal immigrants. Prior to the enactment of Section 4401, Section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, limited eligibility for food stamps to United States citizens, non-citizen nationals, and certain alien groups. The requirements of Section 402 of PRWORA, as well as the alien eligibility requirements contained in Section 6(f) of the Act (7 U.S.C. 2015(f)), were implemented through current regulations at 7 CFR 273.4(a). Under those rules, the following groups are eligible for food stamps:

- United States citizens and non-citizen nationals (as defined in the DOJ Interim Guidance published November 17, 1997 (62 FR 61344));
- Certain Hmong or Highland Laotians and their spouses and children;
- American Indians born in Canada to whom Section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) applies; and
- Members of Indian tribes as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

In addition to the above-mentioned groups, other non-citizens may be eligible for food stamps if they satisfy two requirements. First, the individual must be a qualified alien as defined at 7 CFR 273.4(a)(5)(i).

Under that section, a qualified alien is:

- An alien who is lawfully admitted for permanent residence under the INA;
- An alien who is granted asylum under section 208 of the INA;
- A refugee who is admitted to the United States under section 207 of the INA;
- An alien who is paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
- An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;
- An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;
- An alien who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered; or
- An alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

Second, pursuant to PRWORA, in addition to being a qualified alien under 7 CFR 273.4(a)(5)(i), the individual must meet at least one of the criteria specified at 7 CFR 273.4(a)(5)(ii). Some of the criteria specified at 7 CFR 273.4(a)(5)(ii) make a noncitizen eligible for the Food Stamp Program for only 7 years, while other criteria make the noncitizen permanently eligible for the program. A qualified alien who meets one of the following criteria specified at 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F) is eligible to participate in the Food Stamp Program for 7 years after receiving admitted or granted status:

- An alien admitted as a refugee under section 207 of the INA.
- An alien granted asylum under section 208 of the INA.
- An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) or the INA.
- An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).
- An Amerasian admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461.

A qualified alien who meets one of the following criteria specified at 7 CFR 273.4(a)(5)(ii)(A) and (a)(5)(ii)(G) through (a)(5)(ii)(J) is permanently eligible to participate in the Food Stamp Program:

- An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters of work under Title II of the Social Security Act;

• An alien (or spouse or unmarried dependent child of an alien) with certain military connections;

• An alien who was lawfully residing in the United States on August 22, 1996 and is now receiving benefits or assistance for blindness or disability, as defined in 7 CFR 271.2;

• An alien who was lawfully residing in the United States on August 22, 1996 and was 65 years or older on or before that date;

• An alien who was lawfully residing in the United States on August 22, 1996 and is now under 18 years of age.

Section 4401 of FSRIA amended Section 402 of PRWORA to expand food stamp eligibility for certain additional qualified aliens. First, Section 4401 extends eligibility for food stamps to any qualified alien who has resided in the United States for 5 years or more as a qualified alien. The law specifically provides eligibility to "any qualified alien who has resided in the United States with a status within the meaning of the term 'qualified alien' for a period of 5 years or more beginning on the date of the alien's entry into the United States." The Department interprets this provision to require that, to be eligible to participate in the Food Stamp Program, the alien must have been in a qualified alien status, as defined under PRWORA, for 5 years. Section 4401 could be read to require that the alien have been in a qualified status at the time he or she entered the United States in order to be eligible under this provision. However, the Department believes that such a reading of the law is too restrictive as it would deny the benefits of the provision to aliens who are not qualified when they enter the United States, but later attain qualified status. There is no indication that Congress intended to deny aliens who legally enter the United States and later attain qualified alien status from achieving eligibility for food stamps through the 5-year residency rule. In fact, the Committee report on FSRIA indicates that the Senate version of Section 4401 would have restricted application of the 5-year residence rule by denying it to aliens who enter the country illegally and remain illegally for a period of one year or more. However, the provision was eliminated in Conference. This supports the view that Congress intended the 5-year residency rule to apply to any alien who attains qualified alien status, regardless of their status when they arrived in the United States. The Department is proposing to amend current regulations at 7 CFR 273.4(a)(5)(ii) to make eligible for the Food Stamp Program any alien who has resided in the United States in a qualified alien status as defined in PRWORA for 5 years.

Several groups interested in this provision have asked the Department if, after attaining qualified status, an alien can leave the country for periods of time but still become eligible for food stamps 5 years from the date he or she attained qualified status. The Department interprets the 5-year residency rule as establishing eligibility for an alien who resides here in qualified alien status for a total of 5 years. The 5 years do not need to be consecutive. Therefore, a qualified alien who resides in the United States for two years, leaves the country for a period of time long enough to lose his or her qualified status under INS rules, but then returns to the United States and resides here in a qualified status for another three years will attain eligibility for the program.

The 5-year residency rule has a significant impact on existing regulations related to qualified aliens. First, it effectively eliminates the 7-year time limit on food stamp participation for qualified aliens who are eligible for the program because they meet the criteria set out in PRWORA and at 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F). Aliens who meet the criteria at 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(E) are by definition qualified aliens, and Amerasians admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461 are legal permanent residents. Thus, any alien who would be eligible for food stamps under 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F) will be eligible to receive food stamps for 7 years, but by the fifth year of participation will become permanently eligible for food stamps by virtue of the 5-year residency rule. Because the 5-year residency rule effectively eliminates the 7-year time limit on food stamp eligibility, the Department is proposing to amend current regulations at 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F) to remove reference to the 7-year time limit. The 5-year residency rule also makes two additional categories of qualified aliens eligible for food stamps. Currently, an alien who is paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year or who has been granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980, is a qualified alien. However, neither parolee status nor conditional entrant status in themselves are enough to make a qualified alien eligible for the program. To be eligible, the parolee or conditional entrant would have to satisfy one of the requirements at 7 CFR 273.4(a)(5)(ii). However, now, under the 5-year residency rule, parolees and conditional entrants who retain qualified alien status for 5 years are eligible for the program.

Section 4401 also effectively reduces the applicability of the 40 quarters of work requirement for aliens lawfully admitted for permanent residence under PRWORA and 7 CFR 273.4(a)(5)(ii)(A). Under current rules, to be eligible to participate in the Food Stamp Program, an alien who is a qualified alien because he or she was admitted for permanent residence must have or be credited with 40 qualifying quarters of work to qualify for this exception. Thus, generally, a lawful permanent resident must work for 10 years before becoming eligible to participate in the Food Stamp Program. However, as a result of Section 4401, a lawful permanent resident will now become eligible for food stamps after residing in the United States for five years, whether he or she has any qualifying quarters or not. The 40 quarters requirement is only applicable in cases of lawful permanent residents who have been in the United States less than five years but can still claim 40 qualifying quarters of work, such as in the case of an individual who claims quarters credited from the work of a parent earned before the applicant became 18. Such individuals may be eligible for the program under 7 CFR 273.4(a)(5)(ii)(A) even though they have not resided in the United States for five years.

Although the 40 qualifying quarters requirement has been minimized as an eligibility requirement, it continues to play a role in the area of deeming of the income of a sponsor to a sponsored alien. As discussed below, current regulations at 7 CFR 273.4(c) require that when determining the eligibility and benefit levels of a household in which a sponsored alien is an eligible member, the State agency counts a portion of the income and resources of the sponsor as the unearned income and resources of the sponsored alien. Except for aliens exempt from the deeming requirement in accordance with 7 CFR 273.4(c)(3), the deeming requirement applies until the alien has worked or can receive credit for 40 qualifying quarters of work, gains United States citizenship, or his or her sponsor dies. Thus, even though a lawful permanent resident may be eligible for the Food Stamp Program after 5 years without any qualifying quarters of work, the deeming requirement may apply to the individual until he or she works or can receive credit for 40 qualifying quarters.

In addition to extending eligibility to aliens who satisfy the 5-year residency requirement, Section 4401 also extends eligibility to two other groups of qualified aliens. First, Section 4401 extends eligibility for the Food Stamp Program to all qualified aliens who meet the definition of disabled at Section 3(r) of the Act regardless of the date they began residing in the United States. As noted above, under current rules at 7 CFR 273.4(a)(5)(ii)(H), only those qualified aliens meeting the program's definition of disabled who were lawfully residing in the United States on August 22, 1996, were eligible for food stamps. Beginning October 1, 2002, the effective date of the provision, all qualified aliens who meet the program's definition of disabled are eligible for the program, regardless of the day they began residing in the United States.

Under Section 3(r) of the Act, persons are considered disabled for food stamp purposes if they are receiving or are certified to receive Supplemental Security Income (SSI), Social Security disability, federal or state disability retirement benefits for a permanent disability, veteran's disability benefits, or railroad retirement disability. In addition, persons receiving disability-related Medicaid, state-funded medical assistance benefits, and state General Assistance benefits may be considered disabled for food stamp purposes if they are determined disabled using criteria as stringent as federal SSI criteria. Several States have asked if receipt of benefits under a state Medicaid replacement program would make a qualified alien eligible for food stamps under Section 4401. State Medicaid replacement programs are State-funded programs that provided medical assistance to aliens ineligible for Medicaid. Qualified aliens receiving benefits under such programs would be eligible for food stamps if the programs are equivalent to the State's disability based general assistance programs that meet the Federal SSI disability or blindness criteria.

Second, Section 4401 extends eligibility to all qualified aliens who are under the age of 18. As noted above, under current rules at 7 CFR 273.4(a)(5)(ii)(J), only those qualified aliens under the age of 18 who were lawfully residing in the United States on August 22, 1996, were eligible for food stamps. Beginning October 1, 2003, the effective date of the provision, all qualified aliens under the age of 18 are eligible for the program, regardless of the date they lawfully entered the United States.

The Department is proposing to amend 7 CFR 273.4(a)(5)(ii) to incorporate the revised eligibility requirements for certain qualified aliens.

In regard to the new eligibility requirements for legal immigrants, several states have asked the Department when it should add previously ineligible aliens who become eligible in the middle of a month to a food stamp household. For example, if an ineligible alien attains 5 years of residence in a qualified alien status in the middle of the month, such as May 15, should the alien be added immediately to the household or added in the beginning of the next month? The Department believes that current regulations address this issue. Current rules at 7 CFR 273.12(c)(1)(ii) provide that if the household reports a new member, and the change increases the household's benefit, the State must make the change effective not later than the first allotment issued 10 days after the change was reported. Thus, if the change was reported on May 15, the State agency would have to make the change effective for the June allotment. If the State agency could not make the change prior to issuing the June allotment, the regulations require that it issue the household a supplement for June. If the addition of the new household member would decrease the household's benefits, regulations at 7 CFR 273.12(c)(2) require that the State agency make the change effective for the allotment issued in the month following the month in which the adverse action notice period expires.

2. Elimination of the Deeming Requirement for Noncitizen Children

In addition to expanding Food Stamp Program eligibility to certain noncitizens, Section 4401 of FSRIA also removed deeming requirements for immigrant children. Deeming is the process by which the State agency counts a portion of the income and resources of an alien's sponsor as income and resources belonging to the alien when determining the latter's eligibility for the Food Stamp Program and amount of benefits. Both Section 421(a) of PRWORA and Section 5(i) of the Act impose deeming requirements on the Food Stamp Program. The requirements of the two laws are not fully consistent, however. The Department addressed and resolved the inconsistencies in the final rule on Noncitizen Eligibility and Certification Provisions of Pub. L. 104–193, as amended by Public Laws 104–208, 105–33 and 105–185 (NCEP), published on November 21, 2000 at 65 FR 70134. Readers wishing a fuller understanding of the interaction of the two laws are referred to that rule.

Current deeming requirements appear in food stamp regulations at 7 CFR 273.4(c). The regulations define a sponsored alien as an alien for whom the sponsor has executed an affidavit of support (INS Form I–864 or I–864A) on behalf of the alien pursuant to Section 213A of the INA. In determining the eligibility and benefit levels of a household in which the sponsored alien is an eligible household member, the State agency counts a portion of the income and resources of the sponsor as the unearned income and resources of the sponsored alien. The State agency must count the income and resources of the sponsor's spouse as income and resources of the sponsored alien if the spouse also executed an affidavit of support for the sponsored alien. The State agency may not count the income and resources of a sponsor when the sponsored alien in the applicant household is ineligible to participate in the Food Stamp Program. If an alien's sponsor is sponsoring more than one alien, and the sponsored alien can demonstrate this to the State agency's satisfaction, the State agency must divide the sponsor's deemable income and resources by the number of such sponsored aliens. Unless the sponsored alien is exempt from the deeming requirements, the State agency must deem the sponsor's income and resources to the sponsored alien until the alien gains U.S. citizenship, has worked or can receive credit for 40 qualifying quarters of work, or the sponsor dies.

The amount of the sponsor's income deemed to the sponsored alien is the total monthly earned and unearned income of the sponsor (as determined in accordance with program regulations) at the time of certification minus 20 percent of the sponsor's earned income and minus an amount equal to the Food Stamp Program's monthly gross income limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

The amount of the sponsor's resources deemed to the sponsored alien is the sponsor's total resources (as determined in accordance with program regulations) reduced by $1,500. The State agency must not deem the sponsor's income and resources to a sponsored alien if the sponsored alien is any of the following:

- An alien who is a member of his or her sponsor's food stamp household;
- An alien who is sponsored by an organization or group as opposed to an individual;

• An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;
• An indigent alien that the State agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s); and
• A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after the State agency determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, the State agency must not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the alien does not live with the batterer.

Section 4401 of FSRIA amends Section 421 of PRWORA and Section 5(i) of the Act (7 U.S.C. 2014(i)) to add aliens under the age of 18 to the list of sponsored aliens excluded from deeming requirements. Therefore, as of October 1, 2003, the effective date of the provision, the State agency may not count the income and resources of the sponsor of an alien under the age of 18 when determining the eligibility or benefit level of the sponsored alien's household. The Department is proposing to amend current regulations at 7 CFR 273.4(c)(3) to add sponsored aliens under the age of 18 to the list of aliens exempt from deeming requirements.

In response to the Department's implementing memorandum on FSRIA, a State agency asked how the program's deeming requirements would apply when an adult and child in the same food stamp household have the same sponsor. As noted above, under current rules at 7 CFR 273.4(c)(2)(v), if an alien's sponsor sponsors more than one alien, the State agency will divide the sponsor's deemable income and resources by the number of sponsored aliens and deem to each alien his or her portion. For example, if a sponsor sponsors two aliens who reside in separate households, both of whom are applying for food stamps, the State agency will deem to both aliens (and thus both households) one-half of the sponsor's deemable income and resources. If a sponsor sponsors two aliens who reside in the same household, the State agency will in effect deem to the household 100 percent of the sponsor's deemable income and resources. However, because sponsored aliens under the age of 18 will now be exempt from deeming requirements, following current rules, the State agency must only deem one-half of the sponsor's income to the household. Even though the State agency will not deem any of the sponsor's income and resources to the alien child, the sponsor is still sponsoring the child and under 7 CFR 273.4(c)(2)(v), if a sponsor sponsors more than one alien, his or her deemable income and resources are divided amongst each alien he or she sponsors. Thus, if the sponsor sponsors two aliens, an adult and a child who reside in the same food stamp household, the State agency must divide the sponsor's deemable income and resources by two and deem one-half of such income and resources to the sponsored adult alien. The State agency would deem nothing to the child. The Department is proposing to amend current regulations at 7 CFR 273.4(c)(2)(v) to clarify this point.

At informational meetings, several groups raised an issue about current deeming rules for indigent aliens. As noted above, regular deeming rules do not apply to aliens that have been determined indigent by the State agency. Current rules at 7 CFR 273.4(c)(3)(iv) define an indigent alien as one whose income, consisting of the alien's household's own income and any cash and in-kind assistance provided by the alien's sponsor and others, does not exceed 130 percent of the poverty line for the alien's household's size. If an alien is indigent, the State agency may only deem to the alien the amount of income and resources actually provided by the sponsor. Under current rules, the State agency makes the indigence determination at the time of application, and the determination is good for 12 months.

Current rules also require that the State agency notify the Attorney General of any time a sponsored alien has been determined indigent, and include in the notification the names of the sponsor and sponsored aliens. Under Section 423(b) of PRWORA, upon notification that a sponsored alien has received any benefit under any means-tested public benefits program, the appropriate Federal, State, or political subdivision of a State must request reimbursement by the sponsor in the amount of such assistance.

Immigrant advocacy organizations have raised concerns that some eligible aliens may be deterred from applying for food stamps because of the Attorney General notification requirement and sponsor liability, which could lead to reprisals from their sponsors. The groups have suggested that the Department allow alien applicants to opt out of the indigence determination and have their eligibility and benefit levels determined under regular deeming rules.

The Department agrees that the mandatory notification requirement may be a deterrent to participation for some eligible aliens. We are proposing to amend current rules at 7 CFR 273.4(c)(3)(iv) to allow a household to opt out of the indigence determination and to be subject to regular sponsor deeming rules at 7 CFR 273.4(c)(2).

The advocacy organizations have also asked the Department if State agencies may develop an administrative process which requires an eligible sponsored alien to provide consent before release of information to the Attorney General or the sponsor. These groups feel that many sponsored aliens will learn of the Attorney General notification and sponsor liability requirements only after they have disclosed their immigration status and SSN. Fearing adverse consequences as a result of the notification requirements, the sponsored aliens may withdraw the entire food stamp application, resulting in other household members, in many cases U.S. citizen children, losing the opportunity to receive benefits.

We believe it is within the discretion of the State agencies to utilize a process under which information about the sponsored alien is not shared with the Attorney General or the sponsor without consent so long as the sponsored alien is made aware of the consequences of failure to grant consent or failure to provide any other information necessary for the purposes of deeming the sponsors income to the alien. Pursuant to 7 CFR 273.4(c)(5), until the alien provides information or verification necessary to carry out the deeming requirements the sponsored alien is ineligible. Failure to provide consent to disclose information to the Attorney General or the sponsor would be tantamount to failure to provide the information, thus rendering the sponsored alien ineligible.

Simplified Definition of Resources—7 CFR 273.8

Current regulations at 7 CFR 273.8 reflect the pre-FSRIA requirement that State agencies apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public assistance, general assistance, or supplemental security income. However, households which are categorically eligible for the Food Stamp Program, as reflected in 7 CFR 273.2(j)(2) or (j)(4), do not have to meet the program's resource limits.

Under current regulations at 7 CFR 273.8(b), to be eligible for the program, a household's allowable resources, including both liquid and non-liquid assets, cannot exceed $2,000. However, the resource limit is $3,000 for any household that includes at least one member who is 60 years of age or older. Current regulations at 7 CFR 273.8(e) list resources that may be excluded from the resource test when determining a household's eligibility.

Section 4107 of FSRIA amends Section 5(g) of the Act (7 U.S.C. 2014(g)) to increase the resource limit for households with a disabled person from $2,000 to $3,000. It also amends the Act to provide State agencies the option to exclude from resource consideration any resources that the State agency excludes when determining eligibility for (1) cash assistance under a program funded under part A of title IV of the Social Security Act; or (2) medical assistance under Section 1931 of the Social Security Act (SSA). However, State agencies that choose this option may not exclude cash; licensed vehicles; amounts in any account in a financial institution that are readily available to the household; or other resources the Department determines by regulation to be essential to equitable determinations of eligibility under the Food Stamp Program.

For the purposes of this proposed regulation, "cash assistance under a program funded under part A of title IV of the Social Security Act" means assistance as defined in the Temporary Assistance for Needy Families (TANF) regulations at 45 CFR 260.31(a)(1) and (a)(2), except for programs grand-fathered under Section 404(a)(2) of the Social Security Act. Under 45 CFR 260.31(a)(1) and (a)(2), "assistance" includes "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.*, for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) * * *. It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients, and conditioned on participation in work experience or community service (or any other work activity under Sec. 261.30 * * *)." Programs grand-fathered under Section 404(a)(2) of the Social Security Act include emergency foster care, the Job Opportunities and Basic Skills program and juvenile justice. We do not believe that these grand-fathered programs are what the Congress meant when it used the term "cash assistance" in the statute, even though they may involve a cash payment to a family.

"Medical assistance under Section 1931 of the Social Security Act" means Medicaid for low-income families with children. This section, which was added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform), allows low-income families with children to qualify for Medicaid. It requires that States use the AFDC income and resource standards that were in effect in July 1996, but it also provides options for States to use less restrictive income and resources tests for these families.

For the purposes of this regulation, the Department further proposes that the TANF cash assistance and Medicaid programs from which State agencies can adopt resource exclusions for the Food Stamp Program exclude programs that do not evaluate the financial circumstances of adults in the household while determining eligibility and benefits. We believe that this proposal is in line with the types of State TANF and Medicaid programs Congress envisioned under this provision, and maintains state flexibility.

The requirement at 7 CFR 273.8(c)(3) to deem the resources of sponsors of aliens continues to be in effect. However, if a State agency has chosen in accordance with proposed new paragraph 7 CFR 273.8(e)(19) to exclude a type of resource excluded for TANF or Medicaid, and the alien's sponsor owns that resource, the State agency would not include that resource when determining which resources to deem to the sponsored alien's household.

To ensure that determinations of eligibility under the Food Stamp Program remain equitable, the Department proposes that stocks, bonds, and savings certificates not be excluded from household resources under this rule.

In order to implement section 4107, the Department is proposing to amend 7 CFR 273.8(b) to extend the $3,000 resource limit to households which contain a disabled member or members. (The food stamp definition of a disabled member is reflected at 7 CFR 271.2). The Department is also proposing to amend 7 CFR 273.8 to add a new paragraph (e)(19) which will provide State agencies the option to exclude from resource consideration for food stamp purposes any resources they exclude when determining eligibility for TANF cash assistance or medical assistance under Section 1931 of the SSA. However, a State agency that selects this option may not exclude the following:

1. Licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Act. (Section 5(g)(2)(D) allows State agencies to substitute the vehicle rules they use in their TANF programs for the food stamp vehicle rules when doing so results in a lower attribution of resources to the household.); and

2. Cash on hand and amounts in any account in a financial institution that are readily available to the household, including money in checking or savings accounts, stocks, bonds, or savings certificates.

The term 'readily available' applies to resources, in financial institutions, that can be converted to cash in a single transaction without going to court to obtain access or incurring a financial penalty other than loss of interest. Under the proposed provision, State agencies could exclude deposits in individual development accounts (IDA's) made under written agreements that restrict the use of such deposits to home purchase, higher education, or starting a business. They could also exclude deposits in individual retirement accountants (IRA's) the terms of which enforce a penalty, other than forfeiture of interest, for early withdrawal.

Simplified Definition of Income—7 CFR 273.9(c)

Section 5(d) of the Act (7 U.S.C. 2014(d)) specifies types of income that State agencies must exclude from a household's income when determining the household's eligibility for the program and benefit levels. Section 4102 of FSRIA amends Section 5(d) to add three new categories of income that, at the option of the State agency, may also be excluded from household income. Under the amendment, State agencies may, at their option, exclude the following types of income:

1. Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits and the like that are required to be excluded under a State's Medicaid rules;

2. State complementary assistance program payments excluded for the purpose of determining eligibility for medical assistance under section 1931 of the Social Security Act; and

3. Any types of income that the State agency does not consider when determining eligibility or benefits for TANF cash assistance or eligibility for medical assistance under section 1931.

However, a State agency may not exclude the following:

- Wages or salaries;
- Benefits under Titles I (Grants to States for Old-Age Assistance for the Aged), II (Federal Old Age, Survivors, and Disability Insurance Benefits), IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services), XIV (Grants to States for Aid to the Permanently and Totally Disabled) or XVI (Grants To States For Aid To The Aged, Blind, Or Disabled and Supplemental Security Income) of the Social Security Act (SSA);
- Regular payments from a government source (such as unemployment benefits and general assistance);
- Worker's compensation;
- Legally obligated child support payments made to the household; or
- Other types of income that are determined by the Secretary through regulations to be essential to equitable determinations of eligibility and benefit levels.

The Department is proposing to amend current regulations at 7 CFR 273.9(c) to permit exclusion of the new types of income at State agency option. Current regulations at 7 CFR 273.9(c)(3) already provide an exclusion for educational assistance including grants, scholarships, fellowships, and work-study. That exclusion (based on an exclusion provided at Section 5(d)(3) of the Act) is limited to educational assistance provided to a household member who is enrolled at a recognized institution of post-secondary education and that is used or earmarked for tuition or other allowable expenses. To the extent that a State's Medicaid rules require exclusion of additional educational assistance, *i.e.*, educational assistance that would not be excludable under the current rules at 7 CFR 273.9(c)(3), the State agency has the option of excluding that additional assistance from income for food stamp purposes. Thus, the Department is proposing to amend 7 CFR 273.9(c)(3) to state that, at a minimum, the State agency must exclude educational assistance provided to a household member who is enrolled at a recognized institution of post-secondary education and that is used or earmarked for tuition or other allowable expenses, and that at its option it may exclude any educational assistance required to be excluded under its State Medicaid rules that would not already be excluded under food stamp rules. State agencies that opt to exclude educational assistance that is excluded under Medicaid under this provision must include a statement in their State Plan to that effect, including a statement of the types of educational assistance that are being excluded under the provision.

The Department is also proposing to add a new paragraph, 7 CFR 273.9(c)(18), to provide for the exclusion, at State agency option, of any State complementary assistance program payments excluded for the purpose of determining eligibility for medical assistance under section 1931 of the Social Security Act. Section 1931 grants Medicaid eligibility to families who meet the eligibility standards for the Aid to Families with Dependent Children (AFDC) program in effect in their State on July 16, 1996. Complementary assistance relates to certain types of assistance provided under the old AFDC program. The Department asks that State agencies, in their comments to this proposed rule, include examples of the types of payments which fall under the category of State complementary assistance program payments. State agencies that opt to exclude State complementary assistance program payments under this provision must include a statement in their State Plan to that effect, including a description of the types of payments that are being excluded under the provision.

The Department is also proposing to add a new paragraph, 7 CFR 273.9(c)(19), to allow the State agency at its option to exclude from income any types of income that the State agency does not consider when determining eligibility or benefits for TANF cash assistance or eligibility for medical assistance under section 1931. For the purposes of this proposed regulation, "cash assistance under a program funded under part A of title IV of the Social Security Act" means assistance as defined in the Temporary Assistance for Needy Families (TANF) regulations at 45 CFR 260.31(a)(1) and (2), except for programs grand-fathered under Section 404(a)(2) of the Social Security Act. Under 45 CFR 260.31(a)(1) and (2), "assistance" includes "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (*i.e.*, for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses) * * * It includes such benefits even when they are provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients, and conditioned on participation in work experience or community service (or any other work activity under Sec. 261.30 * * *)." Programs grand-fathered under Section 404(a)(2) of the Social Security Act include emergency foster care, the Job Opportunities and Basic Skills program and juvenile justice. We do not believe that these grand-fathered programs are what the Congress meant when it used the term "cash assistance" in the statute, even though they may involve a cash payment to a family.

"Medical assistance under Section 1931 of the Social Security Act" means Medicaid for low-income families with children. This section, which was added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform), allows low-income families with children to qualify for Medicaid. It requires that States use the AFDC income and resource standards that were in effect in July 1996, but it also provides options for States to use less restrictive income and resources tests for these families.

For the purposes of this regulation, the Department further proposes that the TANF cash assistance and Medicaid programs from which State agencies can adopt income exclusions for the Food Stamp Program exclude programs that do not evaluate the financial circumstances of adults in the household while determining eligibility and benefits. We believe that this proposal is in line with the types of State TANF and Medicaid programs Congress envisioned under this provision, and maintains state flexibility.

Consistent with the requirements of Section 4102 of FSRIA, the State agency may not exclude wages or salaries, benefits under Titles I, II, IV, XIV or XVI of the SSA, regular payments from a government source, worker's compensation, or legally obligated child support payments made to the household. State agencies that opt to exclude any types of income under this provision must include a statement in their State Plan to that effect and describe the types of income being excluded.

States have asked the Department for clarification on some of the types of income that must be counted under Section 4102. First, States have asked whether adoption or foster care payments made to a household must be counted as income if they are excluded for TANF or Medicaid purposes. Section 4102 specifically requires that benefits paid under Title IV of the SSA be counted as income for food stamp purposes. Title IV–E of the SSA authorizes federal payments for foster care and adoption assistance. Therefore, any benefits received by a food stamp household pursuant to a program operated under Title IV–E must be counted as income to the household.

Second, States have asked for additional examples of what constitutes regular payments from a government source. Section 4102 offers two examples, unemployment and general assistance. The Department would also include in this category payments such as the Alaska Permanent Fund Dividend (PFD). The Alaska PFD is an annual payment to all Alaska residents based on oil revenues. The State has been making the payments since 1982. Because the State has been making the payments every year for the last 20 years, the Department believes that they must be considered as regular government payments under Section 4102 and, therefore, countable as household income for the Food Stamp Program. Another example of a regular payment from a government source that must be counted as income for food stamps even if excluded for TANF or Medicaid are VISTA payments made under Title I of the Domestic Volunteer Service Act of 1973. Finally, payments or allowances a household receives from an intermediary that are funded from a government source should also be counted as regular payments from a government source. For example, if a household is participating in an on-the-job training program and is being paid by an employer with funds provided by a Federal, State or local government, the State agency must count those payments as income for food stamp purposes even if they would be excluded under TANF or Medicaid. This requirement does not apply to payments which are excluded from income for the purposes of determining food stamp eligibility under another provision of law.

Finally, several State agencies have asked the Department to define more fully the types of child support payments that must be counted as income under Section 4102. Section 4102 explicitly requires that legally obligated child support payments made to the households be counted as income. This requirement includes any portion of a household's child support payments that are passed-through to the household under the State's TANF program. State agencies have also asked whether voluntary child support payments, or payments that are not legally obligated, must be counted as income. In regard to voluntary child support payments, the Department does not believe that such payments should be treated more favorably than payments that are legally obligated. Therefore, the Department is proposing that all child support payments made to a household be counted as income for food stamp purposes. However, the Department notes that there may be circumstances in which voluntary child support payments are made infrequently or irregularly to the household, and reminds States agencies that infrequent and irregular income can be excludable under current regulations at 7 CFR 273.9(c)(2) if not in excess of $30 a quarter.

Section 4102 also prohibits State agencies from excluding types of income determined by the Department through regulations to be essential to equitable determinations of eligibility and benefit levels. Using this authority, the Department is proposing to add several types of income to the list of non-excludable income. First, the Department is proposing to require State agencies to count gross income from a self-employment enterprise. As noted above, Section 4102 requires State agencies to count wages or salaries for food stamp purpose even if these are excluded under TANF or Medicaid. The Department believes that self-employment income falls into the same category as wages or salaries. For the purposes of this provision, self-employment income includes the types of income described at 7 CFR 273.9(b)(ii), such as gain from the sale of any capital goods or equipment related to a business, income derived from a rental property when a household member is actively engaged in the management of the property for at least an average of 20 hours a week, and payments from a roomer or boarder. The Department is interested in hearing from States that exempt self-employment income for TANF or Medicaid purposes on the standards they use in determining the types and amounts of self-employment income to disregard.

Second, the Department is proposing to require State agencies to count annuities, pensions, retirement benefits, disability benefits, and old age or survivor benefits. These types of income, because they are regular payments, must be counted as income to the household under Section 4102 if they are paid by a government source. The Department does not believe that it is equitable to require that such income be counted when it is paid by a government source but excluded when paid by a private source.

Third, the Department is also proposing that State agencies be required to count monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under 7 CFR 273.8(e)(8). The Department believes that trust fund disbursements may be of a significant amount and may be made on a regular basis to the household.

Finally, the Department is proposing that State agencies be required to count support or alimony payments made directly to a household from nonhousehold members as income to the household. The Department believes that such payments should be treated similarly to child support payments which, as explained above, must be counted as income for food stamp purposes even if excluded for TANF or Medicaid purposes.

This proposal affords State agencies flexibility to simplify and conform administration of the Food Stamp Program to TANF and Medicaid, while ensuring equitable determinations of eligibility and benefit levels within Food Stamps. The proposal identifies those types of income that we believe should be counted because they are likely to be a regular and significant source of income to the household. If a State agency wishes to comment in this area, please be specific about how including or excluding such income would affect the State in its administration of the multiple programs.

The Department has received questions as to whether State agencies may use the authority provided under Sections 4109 of FSRIA to eliminate the requirement at 7 CFR 273.9(b)(3) to count the income of ineligible household members and the requirement at 7 CFR 273.9(b)(4) to deem sponsor income. State agencies must continue to follow these requirements. However, in determining the income of an ineligible household member or sponsor that should be counted as available to the household, State agencies must apply the income exclusion rules at 7 CFR 273.9 which, as proposed in this rule, provide State agencies the option to exclude some types of income that are excluded for TANF or Medicaid. For example, if a household contains a sponsored alien, the State agency must deem the income and resources of the sponsor to the household in accordance with 7 CFR 273.4(c)(2) and 273.9(b)(4). However, if the State agency has chosen in accordance with proposed new paragraph 7 CFR 273.9(c)(19) to exclude for food stamp purposes a type of income excluded for TANF or Medicaid, and the alien's sponsor receives that income, the State agency would not include that income when determining what income to deem to the sponsored alien's household.

Child Support Payments—7 CFR 273.9(c) and (d)

1. State Option To Treat Child Support Payments as an Income Exclusion or Deduction

To be eligible to participate in the Food Stamp Program, an applicant household that does not contain an elderly or disabled member must have a gross monthly income that is equal to or below the program's monthly gross income limit for the household's size. A household's gross monthly income for food stamp purposes is all income received by the household for the month from whatever source except certain types of income that are excluded under food stamp regulations at 7 CFR 273.9(c). Excluded income is subtracted from the household's monthly gross income before that income is compared against the program's gross income limit.

In addition to meeting the monthly gross income limit, all applicant households must also satisfy a monthly net income limit. An applicant household must have a net income that is equal to or below the program's monthly net income limit for the household's size. A household's monthly net income is its monthly gross income (*i.e.*, income after exclusions) minus any of the program's income deductions for which the household is eligible. The Food Stamp Program currently provides households with seven income deductions: (1) A standard deduction (which is provided to all food stamp households); (2) an earned income deduction equal to 20 percent of the household's gross earned income; (3) a medical deduction for expenses over $35 a month for elderly or disabled household members; (4) up to a certain limit, a dependent care deduction for the actual costs the household must pay for the care of children or other dependents while household members are seeking or maintaining employment or while they are participating in education or training programs; (5) the costs for shelter which exceed 50 percent of income after other deductions (limited for households without an elderly or disabled member); (6) an optional shelter deduction for homeless households; and (7) a deduction for legally owed child support payments.

Current rules at 7 CFR 273.9(d)(5) provide households with a deduction from income for legally obligated child support payments paid by a household member to or for a nonhousehold member, including vendor payments made on behalf of the nonhousehold member. Section 4101 of FSRIA amended the Act regarding child support payments by treating legally obligated child support payments made to nonhousehold members as excluded income but offering State agencies the option to continue to treat the payments as an income deduction rather than an exclusion. Section 4101 amends Section 5(d) of the Act (7 U.S.C. 2014(d)) to add legally obligated child support payments made by a household member to a nonhousehold member to the list of income exclusions. It also amends Section 5(e) by removing existing paragraph (4), which established the child support deduction, and inserting a new paragraph (4) giving State agencies the option of treating child support payments as an income deduction rather than as an exclusion.

In order to implement Section 4101 of FSRIA, the Department is proposing to amend 7 CFR 273.9 to add a new paragraph (c)(17) which will provide that legally obligated child support payments are excluded from household income. The paragraph will also provide that State agencies have the option of treating child support payments as an income deduction rather than an income exclusion, and will include a reference to 7 CFR 273.9(d)(5), which contains existing requirements for the child support deduction. That section will be amended to reference new 7 CFR 273.9(c)(17), and will provide that if the State agency chooses not to exclude legally obligated child support payments from household income, then it must provide eligible households with an income deduction for those payments. Section 273.9(d)(5) will be further amended to require States agencies that choose to provide a deduction rather than an exclusion to include a statement to that effect in their State plan of operation.

Child support payments that qualify under existing regulations for the income deduction will also qualify for the income exclusion. Under current regulations at 7 CFR 273.9(d)(5), a household can receive a deduction only for legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments). No deduction is allowed for any amounts the household member is not legally obligated to pay. State agencies, in consultation with the State IV-D agency, may determine what constitutes a legal obligation to pay child support under State law. A deduction is also allowed for amounts paid toward child support arrearages. For more information on what qualifies as a child support payment for purposes of the income deduction (and now exclusion), interested parties should refer to the final rule implementing the child support deduction, published on October 17, 1996, at 61 FR 54282.

State agencies should note that if they provide households an exclusion for legally obligated child support payments rather than a deduction, households reap the benefit of both. The exclusion would cause the household to have a lower gross income, making it more likely that the household would meet the program's monthly gross income limit and, therefore, making it more likely that the household would be eligible for the program. In addition, the excluded payments would not be counted as part of the household's net income, in effect deducting the payments from income.

2. Order of Determining Deductions

Current rules at 7 CFR 273.10(e)(1) specify the order in which State agencies must subtract deductions from income when calculating a household's net income. Under the rules, the order of subtraction is as follows: First, the 20 percent earned income deduction; second, the standard deduction; third, the excess medical deduction; fourth, dependent care deductions; fifth, the child support deduction; and finally the excess shelter deduction (or homeless shelter deduction for homeless households). The excess shelter deduction is subtracted last because, pursuant to Section 5(e)(6) of the Act (7 U.S.C. 2014(e)(6)), households are entitled to a deduction for monthly shelter costs that exceed 50 percent of their monthly income after all other program deductions have been allowed.

Section 4101 of FSRIA requires that if the State agency opts to provide households a deduction for legally obligated child support payments rather than an exclusion, the deduction be determined before computation of the excess shelter deduction. As noted in the previous paragraph, current rules already require that the child support deduction be subtracted from a household's income before the excess shelter deduction is computed. The Department is proposing to make only a minor change to current rules at 7 CFR 273.10(e)(1)(i)(F) to indicate that treating legally obligated child support payments as a deduction is a State option.

Several State agencies have asked the Department how a household's earned income deduction should be computed if the State agency grants an income exclusion for child support payments rather than a deduction. Under current rules at 7 CFR 273.9(d)(2), the earned income deduction is equal to 20 percent of the household's gross earned income. Child support payments that are excluded from income are subtracted from the household's gross income. Thus, under current rules, if the State agency provides the household an income exclusion for child support payments, earned income used to make child support payments will not be part of the household's gross income when the State agency calculates the earned income deduction.

The Department believes the simplest way to address this problem is to amend current rules at 7 CFR 273.9(d)(2) and 273.10(e)(1)(i)(B) to specify that in determining the earned income deduction, the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion at 7 CFR 273.9(c)(17). The Department welcomes suggestions from interested parties as to other methods for ensuring that households receive the full earned income deduction when they receive an income exclusion for child support payments.

3. State Option To Simplify Determination of Child Support Payments

Current rules at 7 CFR 273.2(f)(1)(xii) require the State agency to verify, prior to a household's initial certification, the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. The rules strongly encourage the State agency to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) agency automated data files.

Section 4101 of FSRIA amended Section 5 of the Act (7 U.S.C. 2014) to add a new paragraph (n) that directs the Department to establish simplified procedures that State agencies, at their option, can use to determine the amount of child support paid by a household, including procedures to allow the State agency to rely on information collected by the State's CSE agency concerning payments made in prior months in lieu of obtaining current information from the household.

To implement Section 4101, the Department is proposing to amend current rules at 7 CFR 273.2(f)(1)(xii) to permit State agencies, in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid, to rely solely on information provided through its State's CSE agency and not require further reporting or verification by the household. This option would only be available in the cases of households that pay their child support through their state CSE agency. In order to allow the State's CSE agency to share information with the Food Stamp Program, State agencies following this procedure must require households eligible for the exclusion or deduction to sign a statement authorizing release of the household's child support payment records to the State agency. State agencies that chose this option must include a statement indicating that they have implemented the option in their state plan of operation.

The Department is also proposing to make conforming amendments to 7 CFR 273.2(f)(8)(i)(A), 7 CFR 273.12(a)(1)(vi) and (a)(4). The Department is not proposing any changes to the monthly reporting and retrospective budgeting rules at 7 CFR 273.21 because under 7 CFR 273.21(h) and (i) the State agency may determine what information must be reported on the monthly report and what information must be verified.

The Department would like to hear from State agencies interested in implementing this proposal whether there are any additional issues that the Department needs to address by regulation in order to make this an effective option for States. The Department also welcomes suggestions from interested parties as to other simplified methods State agencies could employ to determine the amount of legally obligated child support payments made by households.

Standard Deduction—7 CFR 273.9(d)(1)

As noted above, a household's net income for food stamp purposes is its nonexcluded gross income minus any deductions for which the household is eligible. Section 5(e) of the Act (7 U.S.C. 2014(e)) lists the six allowable deductions. Section 5(e)(1) requires that the Department provide all households with a standard deduction. Formerly, Section 5(e)(1) set the standard deduction for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands of the United States at $134, $229, $189, $269, and $118, respectively. All households residing in one of the five geographic areas received the same standard deduction, regardless of household size. The standard deduction amounts were fixed and were not subject to any cost-of-living adjustment. Current rules at 7 CFR 273.9(d)(1) reflect these requirements.

Section 4103 of FSRIA amended section 5(e)(1) of the Act to replace the fixed standard deduction with one that is adjusted annually and that also varies by household size. Under the new provision, each household applying for or receiving food stamps in the 48 contiguous States, the District of Columbia, Hawaii, Alaska, and the U.S. Virgin Islands will receive a standard deduction that is equal to 8.31 percent of the Food Stamp Program's monthly net income limit for its household size, except for household sizes greater than six, which will receive the same standard deduction as a six person household. Section 4103 also requires that the standard deduction for any household not fall below the standard deduction in effect in FY 2002. As noted previously, the standard deductions in effect for FY 2002 for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands of the United States were $134, $229, $189, $269, and $118, respectively.

To implement Section 4103, the Department will adjust the standard deduction every October 1 by multiplying the Food Stamp Program's monthly net income limits for household sizes one through six for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, and the U.S. Virgin Islands by .0831, and rounding the result to the nearest whole dollar (*i.e.*, if .5 or higher, round up; if .49 or lower, round down). If the result is less than the FY 2002 standard deduction for any household size, that household size will receive the standard deduction in effect in FY 2002 for its geographic area.

The following chart illustrates how the standard deduction for FY 2003 was calculated for the 48 States and the District of Columbia. The same procedure was used to calculate the standard deductions for Hawaii, Alaska and the U.S. Virgin Islands.

Standard Deduction Values

48 States and DC

Size	Monthly Net Income Limit (in dollars)	New Standard Percentage	Computed FY 2003 Standard Deduction (in dollars)	FY 2002 Standard Deduction (in dollars)	Final FY 2003 Standard Deduction (in dollars)
1	739	8.31%	61	134	134
2	995	8.31%	83	134	134
3	1252	8.31%	104	134	134
4	1509	8.31%	125	134	134
5	1765	8.31%	147	134	147
6+	2022	8.31%	168	134	168

Section 4103 requires that for Guam, the standard deduction for household sizes one to six be equal to two times the monthly net income standard times 8.31 percent. Households with more than six members must receive the same standard deduction as a six-person household. Section 4103 also requires that the standard deduction for any household in Guam not fall below the standard deduction in effect in FY 2002. The following chart illustrates how the standard deductions for Guam for FY 2003 were calculated:

Standard Deduction Values

Guam

Size	Monthly Net Income Limit (in dollars)	Multiplied by 2	New Standard Percentage	FY 2003 Computed Standard Deduction (in dollars)	FY 2002 Standard Deduction (in dollars)	Final FY 2003 Standard Deduction (in dollars)
1	739	1,478	8.31%	122	269	269
2	995	1,990	8.31%	165	269	269
3	1252	2,504	8.31%	208	269	269
4	1509	3,018	8.31%	250	269	269
5	1765	3,530	8.31%	293	269	293
6+	2022	4,044	8.31%	336	269	336

The Department is proposing to amend current regulations at 7 CFR 273.9(d)(1) to reflect the new statutory requirements relating to the standard deduction discussed above. The Department will announce the adjusted standard deduction amounts annually, at the same time it announces the annual adjustments to the program's monthly gross and net income eligibility standards and the maximum allotments. Currently, the Department transmits the annual adjustments by memorandum to State agencies—customarily in August. The Department also posts the new numbers on the FNS Web site at *www.fns.usda.gov/fsp* shortly after officially notifying State agencies.

Because the standard deduction received by food stamp households now varies by household size, State agencies have asked the Department whether, in establishing a household's size, it should count ineligible and disqualified members as members of the household. Under current rules at 7 CFR 273.11(c), ineligible and disqualified members are not included when determining the household's size for the purpose of assigning a benefit level to the household, comparing the household's monthly income with the income eligibility standards, or comparing the household's resources with the resource eligibility limits. The Department proposes that ineligible and disqualified members also not be included when determining the household's size for the purpose of assigning a standard deduction to the household. The Department proposes to amend current rules at 7 CFR 273.11(c)(1)(ii) and (c)(2)(iv) to reflect this new requirement.

Simplified Determination of Housing Costs—7 CFR 273.9(d)(6)(i)

Current rules at 7 CFR 273.9(d)(6)(i) provide that State agencies may develop a homeless household shelter deduction to be used in place of the excess shelter deduction in determining the net income of homeless households. Under the rules, State agencies may set the homeless household shelter deduction at any amount up to a maximum of $143 a month. State agencies may provide the deduction to a household in which all members are homeless and which is not receiving free shelter throughout the month. However, State agencies may make households with extremely low shelter costs ineligible for the deduction. Households receiving the homeless household shelter deduction cannot also receive an excess shelter expense deduction; however, homeless households with actual shelter expenses that exceed their State's homeless household shelter deduction can opt to receive the excess shelter deduction instead of the homeless household shelter deduction if their actual shelter costs are verified.

Section 4105 of FSRIA amended Section 5(e) of the Act (7 U.S.C. 2014(e)) to grant State agencies the option of providing homeless households with a monthly shelter deduction of $143 in lieu of providing them an excess shelter deduction. State agencies may provide the deduction to a household in which all members are homeless and which is not receiving free shelter throughout the month. However, State agencies may make households with extremely low shelter costs ineligible for the deduction.

Current regulations at 7 CFR 273.9(d)(6)(i) already reflect most of the requirements of Section 4105 of FSRIA. The only difference between the current rules and the requirements of Section 4105 is that current rules permit State agencies to develop their own homeless household shelter deduction up to a maximum of $143 a month, whereas Section 4105 mandates that the homeless household shelter deduction be $143 a month. The Department is proposing to amend regulations at 7 CFR 273.9(d)(6)(i) to require State agencies that choose to provide a homeless household shelter deduction to set the deduction at $143 a month. The Department is also proposing to amend those regulations to require State agencies that implement the homeless household shelter deduction to include a statement indicating that they have implemented the option in their state plan of operation. The Department is also proposing to make a conforming amendment to regulations at 7 CFR 273.10(e)(1)(i)(G).

Although Section 4105 only addresses the homeless household shelter deduction, the Conference Report, in its discussion of Section 4105, directs the Department to "review current rules governing allowable shelter costs and their implementation and identify any means, within existing authority, to modify or communicate these rules in a manner that makes the determination of eligible shelter costs less complicated and error prone for food stamp participants and eligibility workers." H.R. Conf. Rep. No. 107–424, at 537–538 (2002).

The Department routinely reviews the program's policy and regulations in an effort to simplify procedures for State agencies and recipients. In recent years, the Department has issued several policy changes relating to shelter costs, including reinterpreting 7 CFR 273.9(d)(6)(ii) to allow condominium fees to be counted as deductible shelter costs, and rescinding a longstanding policy memo to eliminate reporting of changes in rent that are caused by changes in vendor payments.

In order that we may better respond to the directive contained in the Conference Report, the Department is asking for assistance from State agencies and other interested parties in identifying ways to further simplify existing procedures for determining allowable shelter expenses. Interested persons should send their comments to the address noted at the beginning of this document. Suggestions will be addressed in the final version of this rule.

Simplified Standard Utility Allowance—7 CFR 273.9(d)(6)(iii)

Current rules at 7 CFR 273.9(d)(6)(iii) provide State agencies the option of developing standard utility allowances (SUA) to be used in place of a household's actual utility costs when determining the household's excess shelter expenses deduction. State agencies may develop an SUA for any allowable utility expense listed in the regulations at 7 CFR 273.9(d)(6)(ii)(C). Allowable utility expenses listed in that section include the costs of heating and cooling; electricity or fuel used for purposes other than heating or cooling; water; sewerage; well and septic tank installation and maintenance; garbage collection; and telephone. State agencies may establish separate SUAs for each utility, an SUA that includes expenses for all allowable utilities including heating or cooling costs, and a limited utility allowance (LUA) which includes expenses for at least two allowable utility costs. The LUA may not include heating or cooling costs, except that if the State agency is offering the LUA to public housing residents it may include excess heating or cooling costs incurred by such residents.

The current rules at 7 CFR 273.9(d)(6)(iii) implement Section 5(e)(7)(C) of the Act (7 U.S.C. 2014(e)(7)(c)), which generally leaves it to the Department to develop regulations relating to SUAs. Section 5(e)(7)(c), however, does impose certain requirements on the use of SUAs. Among those requirements, the Act prohibits State agencies from providing an SUA that includes heating or cooling costs to households residing in public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The Act also requires that an SUA which includes heating or cooling costs be prorated if the household eligible for the SUA lives with and shares heating or cooling expenses with an individual not participating in the Food Stamp Program, or a household that is participating in the Program, or both. The Act also permits the State agency to mandate use of an SUA for households that incur the expenses included in the SUA if the State agency has developed one or more SUAs which include the costs of heating and cooling and one or more SUAs which do not include either cost, and the SUAs do not increase program costs. The Department has incorporated all of these requirements into current regulations. The prohibition on providing SUAs which include heating or cooling costs to residents of certain public housing units is at 7 CFR 273.9(d)(6)(iii)(C) and (d)(6)(iii)(E); the requirement to prorate an SUA which includes heating or cooling costs when the eligible household lives and shares heating or cooling expenses with others is at 7 CFR 273. 9(d)(6)(iii)(F); and the rules for mandating use of an SUA are at 7 CFR 273.9(d)(6)(iii)(E).

Section 4104 of FSRIA amends Section 5(e)(7)(C) of the Act to simplify current rules relating to the SUA when the State agency elects to make the SUA mandatory. First, Section 4104 allows State agencies that elect to make the SUA mandatory to provide an SUA that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. Second, it eliminates the current requirement to prorate the SUA when a household shares living quarters with others. Therefore, if the State agency mandates use of SUAs, a household eligible for an SUA that includes heating or cooling costs and lives and shares heating or cooling expenses with others must receive the full SUA.

As noted above, Section 5(e)(7)(C)(iii) requires that mandatory SUAs not increase the cost of the Food Stamp Program. Section 4104 of FSRIA further amends Section 5(e)(7)(C) to provide that in determining if a State agency's mandatory SUAs are cost neutral, the Department not count any increase in cost that is due to providing an SUA that includes heating or cooling costs to residents of certain public housing units or to eliminating proration of the SUA for a household that shares living quarters and expenses with others.

The Department is proposing to amend current regulations at 7 CFR 273.9(d)(6)(iii) to incorporate the new requirements. The Department is further amending the regulations to require State agencies that opt to implement a mandatory SUA to include a statement to that effect in their state plan of operation.

The Department is taking the opportunity to address two SUA-related issues in this proposed rule. First, the Department is proposing a technical correction to the title of 7 CFR 273.9(d)(6). The title to the section was inadvertently changed in the NCEP final rule from "shelter costs" to "standard utility allowance." The Department is proposing to amend 7 CFR 273.9(d)(6) to restore the proper title.

Second, the Department wishes to resolve a confusion relating to prorating the SUA when ineligible members are present in the household. Under current regulations at 7 CFR 273.9(d)(6)(iii)(F), the State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible. The Department's intent under this regulation was that households with ineligible members always receive the full SUA.

Current regulations at 7 CFR 273.11(c)(2)(iii) also contain requirements for prorating deductible expenses in households that contain certain types of ineligible members. Under those regulations, the State agency must prorate a household's allowable child support payment, shelter and dependent care expenses if they are paid by or billed to an ineligible member.

Because the SUA is a component of shelter costs, State agencies have interpreted both sets of regulations as applying to the SUA. However, on their face, the regulations appear to conflict. The regulations at 7 CFR 273.9(d)(6)(iii)(F) prohibit proration of the SUA when the household shares the expenses with an ineligible household member. However, the regulations at 7 CFR 273.11(c)(2)(iii) require proration of shelter expenses if the ineligible member is billed for or pays the expense. As a result, State agencies have been following different procedures in regard to prorating the SUA when the household includes an ineligible member, some prorating the SUA and some not.

The Department's intent is that when eligible household members share utility costs with ineligible members, and the household elects to use the SUA, the eligible household must receive the entire (as opposed to a prorated) SUA, regardless of who pays or is billed for the expenses included in the SUA. The Department understands, however, that states have adopted different policies and, therefore, we are not proposing any particular procedure in this rule but are suggesting two alternative procedures and asking interested parties to comment on which procedure they prefer. The Department intends to incorporate into the final rule the procedure that gets the most support from commenters. First, State agencies would implement the Department's original intention and not prorate the SUA when a household contains an ineligible member. Alternatively, State agencies would be required to prorate the SUA when the ineligible member pays either part or all of the expenses included in the SUA. Under this latter option, the household would be entitled to the full SUA if the expenses were paid in their entirety by eligible household members, even if they were billed to the ineligible member.

State Option To Reduce Reporting Requirements—7 CFR 273.12(a)(1)(vii)

1. Current Rules on Reporting Requirements

The Act requires households certified for food stamps to report certain changes in their circumstances that occur during their certification periods. Section 6(c)(1)(A) of the Act (7 U.S.C. 2015(c)(1)(A)) permits State agencies to require households to report their income and circumstances on a periodic basis. The Act prohibits periodic reporting by (1) migrant or seasonal farmworker households, (2) households in which all members are homeless individuals, or (3) households that have no earned income and in which all adult members are elderly or disabled. It also prohibits periodic reporting on a monthly basis by households residing on Indian reservations if there was no monthly reporting system in operation on the Indian reservation on March 25, 1994. Section 6(c)(1)(B) of the Act provides that households not required to file periodic reports on a monthly basis must report changes in income or household circumstances in accordance with regulations issued by the Department.

Current regulations at 7 CFR 273.12(a)(1) require certified households which are not required to file monthly or quarterly reports to report the following changes in circumstances:

- Changes of more than $50 in the amount of unearned income, except changes related to public assistance or general assistance in project areas in which GA and food stamp cases are jointly processed;
- Changes in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income;
- Change in either the wage rate or salary or a change in full-time or part-time employment status, or a change in the amount earned of more than $100;
- Changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting change in shelter costs;
- The acquisition of a licensed vehicle not fully excludable as a resource;
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of $2,000 ($3,000 if the household contains at least one person who is 60 years of age or older or disabled);
- Changes in the legal obligation to pay child support; and
- For able-bodied adults subject to the food stamp time limit, changes in work hours that bring an individual below 20 hours per week, averaged monthly.

Current regulations at 7 CFR 273.12(a)(1)(vii) permit State agencies to simplify reporting requirements for households with earned income who are assigned certification periods of 6 months or longer. State agencies may require such households to report only changes in income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline (*i.e.*, the program's monthly gross income limit) for their household size. If the State agency selects this option, it cannot require households certified for 6 months to report changes in circumstances in accordance with 7 CFR 273.12(a)(1) (except in the case of individuals subject to the food stamp time limit under 7 CFR 273.24, who must continue to report changes in work hours that bring them below 20 hours per week, averaged monthly). Households with earned income certified for longer than 6 months must submit an interim report at 6 months that includes all of the items subject to reporting under paragraph (a)(1)(i) through (a)(1)(vi). During the six-month reporting period, the State agency must act on changes reported by the household that increase benefits in accordance with 7 CFR 273.12(c) and on changes in public assistance (PA) and general assistance (GA) grants and other sources that are considered verified upon receipt by the State agency.

Current regulations at 7 CFR 273.12(a)(2) require that certified households report changes within 10 days of the date the changes become known to the household. For reportable changes of income, the State agency may require that change to be reported as early as within 10 days of the date that the household becomes aware of the change or as late as within 10 days of the date that the household receives the first payment attributable to the change. For households subject to simplified reporting, the household must report changes no later than 10 days from the end of the calendar month in which the change occurred, provided that the household has at least 10 days within which to report the change.

2. FSRIA Changes

Section 4109 of FSRIA amends Section 6(c)(1) of the Act to provide State agencies the option to extend simplified reporting procedures from just households with earnings to all food stamp households. In addition, Section 4109 amends Section 6(c)(1) to provide that State agencies may require households that submit periodic reports in lieu of change reporting to submit such reports once every month up to once every six months. Households which are required to report less often than quarterly (*i.e.*, those required to report at 4-month, 5-month, or 6-month intervals) must report, in a manner prescribed by the Department, when their income for any month exceeds the program's monthly gross income limit for their household size.

3. Proposed Revisions to Reporting Requirements

The Department is proposing to move current regulations on simplified reporting from 7 CFR 273.12(a)(1)(vii) to 7 CFR 273.12(a)(5). The Department is proposing to amend current rules to include the following requirements:

- The State agency may include any household certified for at least 4 months within a simplified reporting system except households subject to monthly reporting under 7 CFR 273.21 or quarterly reporting under 7 CFR 273.12(a)(4). The statute does not provide the Department authority to apply simplified reporting to households certified for less than 4 months.
- Households exempt from periodic reporting under Section 6(c)(1)(A), which includes homeless households and migrant and seasonal farm workers, may be subject to simplified reporting but may not be required to submit periodic reports. The certification periods of such households must be at least 4 months but not more than 6 months. While it is technically possible for State agencies to use simplified reporting for elderly and disabled households with no earned income, the Department strongly discourages this practice. Under current regulations, these households are eligible for certification periods up to 24 months long. Under simplified reporting, they would have to be recertified at least every six months because these households cannot be required to submit periodic reports. Because these households rarely experience changes in their circumstances, imposing more frequent recertifications would increase their burden while providing little, if any, benefit to the States or the Federal government. The State agency may require other households subject to simplified reporting to submit periodic reports on their circumstances from once every 4 months up to once every 6 months.
- The State agency does not have to require periodic reporting by any household certified for 6 months or less. However, households certified for more than 6 months must submit a periodic report at least every 6 months.
- Households subject to simplified reporting must report when their monthly gross income exceeds the monthly gross income limit for their household size.
- Households will be required to report only if their income exceeds the monthly gross income limit for the household size that existed at the time of the household's most recent certification or recertification. The Department recognizes that a household's size may change during the certification period, but we believe it will be simpler for households to follow the reporting requirement if they make their decision whether or not to report based on the household size and income threshold provided to them at their most recent certification or recertification. Requiring the household to independently determine household size and the corresponding income threshold will likely be confusing for the household and error prone for the State agency.
- The periodic report form must request from the household information on any of the changes in circumstances listed at 7 CFR 273.12(a)(1)(i) through (a)(1)(vii).
- The periodic report form must be the sole reporting requirement for any information that is required to be reported on the form, except that households must report when their monthly gross income exceeds the monthly gross income limit for its household size and able-bodied adults subject to the time limit of § 273.24 must report whenever their work hours fall below 20 hours per week, averaged monthly.
- The State agency has two options for acting on changes in household circumstances reported outside the periodic report (other than changes in monthly gross income that exceed the monthly gross income limit for the household's size). First, the State agency may follow current procedures at 7 CFR 273.12(a)(1)(vii)(A). Those rules generally require that the State agency only act on changes that a household reports outside its periodic report if the changes would increase the household's benefits. Other than increases in income that result in income exceeding the monthly gross income limit, the State agency may only act on changes that would decrease benefits if the change, reported by the household or by another source, is verified upon receipt or is a change in the household's PA or GA grant. Second, the State agency may act on all reported client changes, regardless of whether such changes increase or decrease the household's benefits. Following implementation of simplified reporting in the NCEP final rule, the Department approved a number of waivers requesting this later procedure. To eliminate the need to approve future waivers, the Department is proposing to incorporate the procedure as an option in the regulations.
- The Department is also proposing that State agencies that choose to act on all reported changes not be required to act on changes a household reports for another public assistance program when the change does not trigger action in that other program but would decrease the household's food stamp benefit. For example, if a household receiving Medicaid as well as food stamps reports an increase in income to its Medicaid office that it is not required to report for food stamp purposes (*i.e.*, the income does not push the household over the monthly gross income limit for its household size), the State agency would not have to reduce the household's food stamp benefit if the income change would not trigger a change in the household's Medicaid eligibility or benefits. This provision is intended to relieve State agencies that choose to act on all reported changes from the burden of acting on reports required by another public assistance program that do not trigger action in that other program and would not increase the household's food stamp benefit.
- A State agency that opts to utilize simplified reporting procedures must include in its state plan of operation a statement that it has implemented the option and a description of the types of households to whom the option applies.

Current rules at 7 CFR 273.12(a)(1)(vii) do not address the procedures the State agency should follow if the household fails to submit a complete periodic report or if it submits a complete report that results in a reduction or termination of benefits. The Department is proposing that under such circumstances the State agency follow the same procedures used for quarterly reporting at 7 CFR 273.12(a)(4)(iii). Under the quarterly reporting requirements, if a household fails to file a complete report by the specified filing date, the State agency sends a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation is terminated. If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in 7 CFR 271.2. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

The Department is also proposing that periodic reports be subject to the requirements at 7 CFR 273.12(b)(2), which currently apply only to quarterly reports. Section 273.12(b)(2) requires that quarterly reports be written in clear, simple language, and meet the program's bilingual requirements described in 7 CFR 272.4(b). It also requires that the quarterly report form specify the date by which the State agency must receive the form and the consequences of submitting a late or incomplete form; the verification the household must submit with the form; where the household can call for help in completing the form; and that it include a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in reduction or termination of benefits.

Simplified Determination of Deductions—7 CFR 273.12(c)

Current rules at 7 CFR 273.9(d) provide households with seven income deductions: (1) A standard deduction (which is provided to all food stamp households); (2) an earned income deduction equal to 20 percent of the household's gross earned income; (3) a medical deduction for expenses over $35 a month for elderly or disabled household members; (4) up to a certain limit, a dependent care deduction for the actual costs the household must pay for the care of children or other dependents while household members are seeking or maintaining employment or while they are participating in education or training programs; (5) the costs for shelter which exceed 50 percent of income after other deductions (limited for households without an elderly or disabled member); (6) an optional shelter deduction for homeless households; and (7) a deduction for legally owed child support payments. As explained above, deductions are subtracted from a household's nonexcluded monthly gross income to determine its monthly net income.

A household's eligibility for and amount of a deduction are established at the household's certification. As previously discussed in the Department's proposals amending 7 CFR 273.12(a), food stamp rules currently require a participating household to report certain changes in circumstances that occur during the certification period. Some of the changes that must be reported may affect a household's deductions.

Under change reporting rules at 7 CFR 273.12(a)(1)(i), households may be required to report when their earned income changes by more than $100 in a given month. A change in the household's earned income can affect several deductions. It will have a direct effect on the household's earned income deduction. It may also affect the computation of a household's excess shelter deduction because the amount of the deduction is dependent on the household's gross income. Under 7 CFR 273.12(a)(1)(ii), households must report changes in composition which can affect the dependent care deduction and, as discussed in a previous section of this rule, may now affect the household's standard deduction. Under 7 CFR 273.12(a)(1)(iii), households must report changes in residence and the resulting changes in shelter costs, which may affect a household's excess shelter deduction. Finally, under 7 CFR 273.12(a)(1)(vi), households must report changes in the legal obligation to pay child support, which may affect the household's child support deduction. In accordance with rules at 7 CFR 273.10(d)(4), households eligible for the medical expense deduction are not required to file reports about their medical expenses during the certification period.

Under current rules on quarterly reporting at 7 CFR 273.12(a)(4) and simplified reporting at 7 CFR 273.12(a)(1)(vi), households must report on the items specified in 7 CFR 273.12(a)(1) through periodic reports. Under Monthly Reporting and Retrospective Budgeting (MRRB) rules at 7 CFR 273.21, the State agency may specify the household circumstances to be reported monthly. The State agency can require households subject to MRRB to report information over and above what is required under 7 CFR 273.12(a)(1). For example, a State agency could require monthly reporting of changes in alien status, shelter and utility expenses, and the actual amount of child support payments. In addition to mandatory reporting requirements under the regulations, recipient households may voluntarily report changes in the amount of deductible expenses during the certification period.

Current rules at 7 CFR 273.12(c) specify the action that the State agency must take on changes in household circumstances reported during the certification period. The rules require the State agency to take prompt action on all reported changes to determine if they affect the household's eligibility or allotment. If a reported change increases the household's benefits, the State agency must make the change effective no later than the first allotment issued 10 days after the date the change was reported to the State agency. If the change decreases the household's benefit, or makes it ineligible for the program, the State agency must issue a notice of adverse action within 10 days of the date the change was reported and decrease the household's benefit effective no later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. If a notice of adverse action is not used due to one of the exemptions in 7 CFR 273.13(a)(3) or (b), the decrease must be made effective no later than the month following the change. For households eligible for the medical expense deduction, the State agency may only act on changes not voluntarily reported by the household if they are verified upon receipt and do not necessitate contact with the household.

Section 4106 of FSRIA amends Section 5(f)(1) of the Act (7 U.S.C. 2014(f)(1)) to provide State agencies the option of disregarding until a household's next recertification any changes that affect the amount of deductions for which a household is eligible. In other words, if a household reports a change in circumstance that would change a deduction amount or the household's eligibility for the deduction, the State agency may disregard the change and continue to provide the household the deduction amount that was established at certification until the household's next recertification, when it would have to amend the deduction to reflect the household's then current circumstances. However, section 4106 does require the State agency to act on two types of reported changes that affect deductions. First, the State agency must act on any change in a household's excess shelter cost stemming from a change in residence. Second, the State agency must act on changes in earned income in accordance with regulations established by the Department.

The Department is proposing to amend current regulations at 7 CFR 273.12(c) to provide State agencies the option of disregarding any changes that would affect the amount of a deduction or the household's eligibility for it until the household's next recertification. Under the proposed regulations, the State agency must act on changes in a household's excess shelter cost stemming from a change in residence and on changes in earned income. In addition, a State agency that implements the option must include a statement to that effect in its state plan of operation and it must specify the deductions affected.

Section 4106 provides that the State agency must act on changes in earned income in accordance with standards developed by the Department. The Department is proposing no change to current regulations in regard to the State agency's responsibility to act on reported changes in earned income. Current rules require the State agency to make appropriate changes to the household's deductions when there is a reported change in earned income. The Department believes that retaining current rules in this area imposes no additional administrative burden on State agencies and reflects the intent of the statute.

To provide State agencies with maximum flexibility, the Department is proposing that State agencies be permitted to ignore not only changes that affect deductions that are reported by the household, but also changes that the State agency learns from a source other than the household. For example, the State agency would not be required to act during the certification period on changes in a household's child support payments it discovers through a data match with the State's Title IV–D agency but could disregard such changes until the household's next recertification. The State agency, however, would continue to be required to change deductions as a result of changes in earned income and shelter costs arising from a change in residence which it learns from another source which are verified upon receipt.

Under the proposed regulations, the State agency has the option of ignoring changes (other than changes in earned income and changes in shelter costs related to a change in residence) for all deductions or for any particular deduction. The State agency may also ignore changes for deductions for certain categories of households while acting on changes for those same deductions for other types of households. The Department is proposing, however, that the State agency not act on changes in only one direction. If the State agency chooses to act on changes that affect a deduction, then it must act on both changes that increase the deduction and changes that decrease the deduction. Acting only on changes that would decrease a household's deductions would unfairly harm households, while acting only on changes that would increase a household's deductions would increase program costs beyond what was anticipated when the provision was enacted.

The Department is concerned that this provision could harm households that experience significant increases in their expenses during their certification periods. The Department is considering including in the final regulation one of two limitations on the provision that would protect households: (1) Requiring State agencies that take this option to act on reported changes in expenses that exceed a certain dollar threshold; or (2) requiring state agencies that take this option to act on changes that affect deductions after the sixth month for households that are certified for 12 months. We are interested in hearing commenters' opinions about these restrictions as well as hearing other suggestions for reducing the potential harmful effect of the provision on households.

The Department is proposing a limitation on the State agency option to disregard acting on reported changes that affect deductions for households assigned 24-month certification periods. Under current rules at 7 CFR 273.10(f)(1), State agencies may assign certification periods of up to 24 months for households in which all adult members are elderly or disabled. Section 3(c) of the Act (7 U.S.C. 2012(c)) and the regulations at 7 CFR 273.10(f)(1) require the State agency to have a contact with elderly and disabled household certified for 24 months at least once every 12 months. The Department is proposing that the State agency act on changes affecting deductions that are reported by these households during the first 12 months of their certification period at the required 12-month contact. Changes reported during the second 12 months could be disregarded until the household's next recertification.

Current rules at 7 CFR 273.10(f)(2) require that State agencies certify for 24 months households residing on a reservation who are subject to monthly reporting. The Department is proposing that if the State agency chooses to disregard acting on changes that affect deductions for these households, the State agency act on changes reported by these households during the first 12 months of their certification period in the thirteenth month of the household's certification period. Changes reported during the second 12 months could be disregarded until the household's next recertification.

In addition to amending current rules at 7 CFR 273.12(c), the Department is also proposing to amend current regulations at 7 CFR 273.21 to allow for the disregarding of changes that affect deductions for households subject to monthly reporting and retrospective budgeting. As with prospectively budgeted households, the State agency may not disregard the effect on household deductions of reported changes in earned income and changes in shelter costs related to a change in residence.

The Department is proposing to modify current rules at 7 CFR 273.12(b)(1) and (b)(2) and 273.21(h)(2) to require the State agency to give notice in all change report, periodic report, and monthly report forms if it intends to postpone changing deductions based on reported information until the household's next recertification.

Transitional Food Stamps for Families Moving From Welfare—7 CFR 273.12(f)(4)

Current regulations at 7 CFR 273.12(f)(4) provide State agencies the option to offer transitional food stamp benefits to households leaving the Temporary Assistance for Needy Families (TANF) program. Transitional benefits ensure that such households can continue to meet their nutritional needs as they adjust to the loss of cash assistance. The Department adopted the transitional benefit option in the NCEP final rule at 65 FR 70134. The option was not specifically authorized by statute, but was developed in response to comments received on the earlier proposed rule. For more information about the development of the transitional food stamp benefits policy, please refer to the NCEP final rule.

State agencies that elect the transitional benefit option freeze the food stamp benefits of a household leaving TANF for a period of up to 3 months (the transitional period). Thus, for up to 3 months, the household continues to receive the food stamp benefit it was receiving in the month that it exited TANF. However, if the household experiences a decrease in net income because of the loss of TANF, then the State agency may not continue the same food stamp benefit but must adjust the benefit for the transitional period to reflect the loss in net income. State agencies may extend the certification period of households leaving TANF for up to three months in order to provide transitional benefits except that the State agency may not extend a household's certification period beyond the maximum allowable for a household of its circumstances in accordance with 7 CFR 273.10(f).

During the transitional period, the household has no reporting requirement. If it chooses to report a change in circumstances, the State agency must act during the transitional period on changes that increase the household's benefit amount. For changes that would lower the household's benefit, the State agency must make those changes effective the month after the transitional period ends.

The State agency must issue food stamp households leaving TANF a "Transition Notice" (TN) that advises the household of the following:

- Because of the closure of cash assistance, the State agency must reevaluate the household's food stamp case no more than 3 months from the effective date of the TANF case closing;
- The household's food stamp benefit amount will remain the same as when it was receiving cash assistance for up to three months (or that the State agency has adjusted the food stamp benefit amount if the household's income is decreasing as the result of leaving cash assistance);
- The household is not required to report or provide verification for changes in household circumstances during the transitional period. The TN will specify the date on which the household must resume reporting.

Before the end of the transitional period, the State agency must issue the household a written request for contact (RFC) in accordance with 7 CFR 273.12(c)(3). The RFC advises the household of the verification it must provide or the actions it must take to clarify its circumstances.

At the end of the transitional period, the State agency performs one of the following actions:

- Closes the household's food stamp case if the household is no longer eligible for the program;
- Adjusts the household's benefit level if the household remains eligible. The State agency may also extend the household's certification period in accordance with 7 CFR 273.10(f)(5);
- Recertifies the household in accordance with 7 CFR 273.14 if the household has reached the maximum number of months in its certification period during the transition period; or
- Closes the case if the household has not provided sufficient information to determine its continuing eligibility.

A State agency electing to provide transitional benefits must provide such benefits, at a minimum, to all households with earnings who leave TANF. The State agency may not provide transitional benefits to a household which is leaving TANF when:

- The State agency has determined that the household is noncompliant with TANF requirements and the State agency is imposing a comparable food stamp sanction in accordance with 7 CFR 273.11;
- The State agency has determined that the household has violated a food stamp work requirement in accordance with 7 CFR 273.7;
- The State agency has determined that a household member has committed an intentional Program violation in accordance with 7 CFR 273.16, or the State agency is closing the household's TANF case in response to information indicating the household failed to comply with food stamp reporting requirements.

Section 4115 of FSRIA amends Section 11 of the Act to add a transitional benefits provision (7 U.S.C. 2020(5)). This new statutory provision incorporates the current regulatory option but expands its scope in significant ways.

First, Section 4115 lengthens the transitional period from up to three months to up to five months. In addition, the new provision permits State agencies to extend the household's certification period beyond the limits established in 7 CFR 273.10(f) to provide the household with up to a full five months of transitional benefits. For example, under current regulations a household in a 12-month certification period that leaves TANF in the tenth month of its food stamp certification period may only receive two months of transitional benefits; *i.e.*, until the end of its food stamp certification period. Under the expanded Section 4115 provision, the State agency may extend the household's food stamp certification period an additional three months in order to provide the household with up to a full five months of transitional benefits.

Second, during the transitional period households will receive the same benefit that they received in the month prior to loss of TANF, adjusted for any reduction in income due to the loss of TANF. However, Section 4115 also grants State agencies the option of adjusting the household's benefit in the transitional period to take into account changes in circumstances that it learns of from another program in which the household participates.

Third, the household has the option of applying for recertification at any time during the transitional period. Thus, if a household applies for recertification during the first month of its transitional period and is determined eligible, the State agency must terminate transitional benefits, assign the household a new certification period, and begin issuing new benefits.

Fourth, if the household does not apply for recertification during the transitional period, Section 4115 provides the State agency the option in the final month of the transitional period to shorten the household's certification period and require the household to undergo recertification.

Finally, Section 4115 modifies the types of households who are ineligible for transitional benefits. Under Section 4115, the following households are ineligible to receive transitional benefits:

- Households leaving TANF due to a TANF sanction;
- Households who are members of any category of households designated by the State agency as ineligible for transitional benefits; or
- Households in which all members are ineligible to receive food stamps under Section 6 (7 U.S.C. 2015) of the Act. A household may be ineligible under section 6 for any of the following reasons:

—Disqualified for intentional program violation;
—Ineligible for failure to comply with a work requirement;
—An SSI recipient in a cash out state;
—An ineligible student;
—An ineligible alien;
—Fails to provide information necessary for making determination of eligibility or for completing any subsequent review of its eligibility;
—Ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the program;
—Has been sanctioned in accordance with 7 CFR 273.11(k) for failure to perform an action under Federal, State or local law relating to a means-tested public assistance program;
—Disqualified for receipt of multiple food stamps;
—Disqualified for being a fleeing felon;
—At State option, ineligible for failing to cooperate with child support agencies;
—At State option, ineligible for being delinquent in court ordered child support; or
—Able-bodied adults without dependents (ABAWDs) who fail to comply with the program's ABAWD work requirement.

The Department is proposing to amend current regulations at 7 CFR 273.12(f)(4) to implement the new requirements.

The Department is proposing to amend the introductory paragraph at 7 CFR 273.12(f)(4) by designating it as 7 CFR 273.12(f)(4)(i). We propose to further amend the paragraph by eliminating the requirement that transitional benefits be provided, at a minimum, to all households with earnings who leave TANF. Beyond those households disqualified by statute, State agencies have unqualified authority under Section 4115 to designate the categories of households eligible for transitional benefits. We are also proposing to amend the paragraph to require State agencies that choose to provide transitional benefits to indicate in their state plan that they are providing such benefits and to specify the categories of households eligible for such benefits and the maximum number of months for which transitional benefits will be provided.

We are also proposing to amend the paragraph to update the list of households that are ineligible for transitional benefits to reflect the requirements of Section 4115. As noted above, Section 4115 makes households ineligible for transitional benefits if they are ineligible to receive food stamps under Section 6 of the Act. Because Section 4115 refers to ineligible households rather than ineligible household members, the Department interprets this provision as applying only when the entire household is ineligible under Section 6. A household with an ineligible member is still eligible for transitional benefits if the remaining members of the household are eligible for food stamps. State agencies must follow the normal procedures in 7 CFR 273.11(c) to exclude ineligible members from the calculation of transitional benefits.

Some State agencies have inquired whether the transitional benefit option is limited to formerly "pure" TANF households, *i.e.*, households in which all members received TANF. Neither Section 4115 nor current regulations specify whether the transitional benefit option is only available to formerly pure TANF households or whether State agencies may also provide transitional benefits to mixed households, *i.e.*, households in which only some members were receiving TANF. The Department believes that since Section 4115 does not limit the transitional benefit option to only formerly pure TANF households, State agencies should have the option to provide such benefits to formerly mixed TANF households as well. The Department is proposing to specify in revised 7 CFR 273.12(f)(4)(i) that the State agency has the option of providing transitional benefits to mixed TANF households.

The Department is proposing to add a new 7 CFR 273.12(f)(4)(ii) which will remind State agencies that they must follow the procedures at 7 CFR 273.12(f)(3) to determine the continued eligibility and benefit levels of households leaving TANF who are denied transitional benefits. Current rules at 7 CFR 273.12(f)(3) prohibit the State agency from terminating a household's food stamp benefit when the household loses TANF eligibility without a separate determination that the household fails to meet the Food Stamp Program's eligibility requirements.

The Department is proposing to renumber current paragraph 7 CFR 273.12(f)(4)(i) as (f)(4)(iii). The Department is also proposing to make several amendments to the requirements of the paragraph. First, we are amending the paragraph to change the length of the transitional period from up to 3 months to up to 5 months. Second, we are amending the paragraph to note that in addition to adjusting the household's food stamp benefit amount before initiating the transition period to account for decreases in income due to the loss of TANF, the State agency may also adjust the benefit to account for changes in household circumstances that it learns from another program in which the household participates. Section 4115 does not address whether the benefit can be adjusted to account for changes learned from another program only at the beginning of the transitional period or if the benefit can be adjusted at any time during the period. To provide maximum flexibility to State agencies, the Department is proposing that the State agency be permitted to adjust the household's transitional benefit at any time during the transitional period to account for changes in household circumstances that it learns from another program in which the household participates. Finally, the Department is removing the prohibition on extending the household's certification period beyond the maximum periods specified in 7 CFR 273.10(f)(1) and (f)(2) so that the State agency may extend the household's certification period up to five months in order to provide the household with up to a full five months of transitional benefits.

The Department is proposing to add a new 7 CFR 273.12(f)(4)(iv) to address a question raised by a State agency. The State agency asked whether, in providing transitional benefits to a household, it could shorten the household's food stamp certification period when the household leaves TANF and assign the household a new certification period that conforms with the transitional period. We do not find any bar to such a procedure in Section 4115, which allows State agencies to require households to undergo a recertification at the end of their transitional period. In fact, such a procedure could simplify implementation of transitional benefits, thus encouraging more State agencies to provide the benefits to households. However, the procedure would have to be seamless to households to avoid compromising the very purpose of the transitional benefit option, which is to allow the household to continue receiving food stamp benefits for several months after leaving TANF without having to undergo a recertification. Therefore, the Department is proposing to include in 7 CFR 273.12(f)(4) a provision allowing the State agency, when the household becomes eligible for transitional benefits, to shorten the household's certification period and assign the household a new certification period that corresponds with the transitional period. All recertification requirements that would normally apply when the household's certification period is ended, such as the requirement to submit a new application and undergo an interview, would be postponed to the end of the new certification period. The State agency would not have to issue a notice of adverse action when the household's certification period is shortened, but would have to specify in the transitional notice that the household must be recertified at the end of the transitional benefit period or if it returns to TANF during the transitional period. All of the requirements governing transitional benefits laid out in this section would continue to apply to the State agency and to the household.

The Department is proposing to add a new 7 CFR 273.12(f)(4)(v). In this paragraph, the Department would include the provision that a household may apply for recertification at any time during the transitional period. The Department is proposing that the State agency observe the following procedures when a household submits a request for recertification prior to the last month of its transitional benefit period:

- The State agency must schedule an interview in accordance with 7 CFR 273.2(e);
- The State agency must provide the household with a notice of required

verification in accordance with 7 CFR 273.2(c)(5) and provide the household a minimum of 10 days to provide the required verification.

- If the household fails to undergo an interview or submit required verification within the timeframes established by the State in accordance with the previous two sentences, or the household is determined to be ineligible for the program, the State agency will deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the State agency will either recertify the household or send an RFC, as discussed below;
- If the household is determined eligible for the program, its new certification period will begin with the first day of the month following the month in which the household submitted the application for recertification, and the State agency would issue the household full benefits for that month. For example, if the household applied for recertification on the 25th day of the third month of a five-month transitional period, and the household is determined eligible for the regular Food Stamp Program, the State agency would begin the household's new certification period on the first day of what would have been the fourth month of the transitional period.
- If the household is determined eligible for the regular Food Stamp Program but is entitled to a benefit lower than its transitional benefit, the State agency must encourage the household to withdraw its application for recertification and continue to receive transitional benefits for the full transitional period. If the household chooses not to withdraw its application, the State agency must complete the recertification process and issue the household the lower benefit effective with the first month of the new certification period.
- Applications for recertification submitted in the final month of the transitional period would be processed in accordance with current regulations at 7 CFR 273.14.

The Department is proposing to renumber 7 CFR 273.12(f)(4)(ii) as (f)(4)(vi). The Department proposes to maintain the existing requirement that the State agency issue a transition notice to households that are receiving transitional benefits. However, the Department is proposing to modify the contents of the notice. First, the notice must inform the household of its eligibility for transitional benefits and the length of its transitional period.

Second, the notice must inform the household that it has a right to apply for recertification at any time during the transitional period. The Department suggests, but will not require, that the State agency send the household an application for recertification along with the transition notice or print on the notice the Internet address for the application if the State agency maintains a web page. The notice must also explain that if the household does not apply for recertification during the transitional period, at the end of the transitional period the State agency must either reevaluate the household's food stamp case or require the household to undergo a recertification. Third, the notice must explain any changes in the household's benefit due to the loss of TANF income and/or changes in household circumstances learned of from another State or Federal means-tested assistance program. Fourth, the notice must explain that the household is not required to report or verify changes in household circumstances until the deadline established in a written RFC sent by the State agency to the household pursuant to 7 CFR 273.12(c)(3), or the household's recertification interview.

The Department is proposing to renumber current paragraph 7 CFR 273.12(f)(4)(iii) as (f)(4)(vii). Section 273.12(f)(4)(iii) currently addresses the State agency's requirement to act on changes in circumstances that the household reports during its transitional period. Current rules at 7 CFR 273.12(f)(4)(ii) require the State agency to notify the household through the transition notice that it may report during the transition period if its income decreases or its expenses or household size increases. Section 273.12(f)(4)(iii) requires that if a household reports a change during the transitional period that would increase its benefit, the State agency must act on the change during the transitional period. However, if the household reports a change that would decrease its benefit, the State agency must not act on the change until after the transitional period has ended.

Section 4115 requires that the household's benefit during the transitional period be equal to the benefit it was receiving in the month preceding termination of TANF, adjusted for the loss of TANF income and, at the State agency's option, changes in household circumstances that the State agency learned of from another program in which the household participates. The Conference Report states that the household's benefit in the transitional period shall not be adjusted "for any other changes in circumstances that could increase household benefits and which the household may report." H.R. Conf. Rep. No. 107–424, at 526 (2002). The Conference Report's language on increasing a household's benefit during the transitional period due to reported changes in circumstances is consistent with Section 4115's provision permitting a household to apply for recertification at any time during the transitional period. Thus, if a household experiences a change during the transitional period that would increase its benefit, Section 4115 allows the household to apply for recertification rather than report the change.

The Department believes that requiring the State agency to act on any reported changes in circumstances during a household's transitional period defeats the intent of the transitional benefit, which is to provide the household for a fixed number of months with the same benefit it received prior to termination of TANF, with the benefit adjusted only for the loss of TANF income and, at State agency option, other changes that the State agency learns of from the household's participation in another program. In addition, the household is protected from being denied increased benefits by having the option of applying for recertification at any time during the transitional period. Therefore the Department is proposing to remove the requirement at 7 CFR 273.12(f)(4)(ii) that the State agency notify the household through the transition notice that it may report during the transition period if its income decreases or its expenses or household size increases, and the requirement at 7 CFR 273.12(f)(4)(iii) that the State agency act on changes during the transitional period that would increase household benefits.

Because participating food stamp households are not accustomed to applying for recertification prior to the end of their certification period, the Department is concerned that many households, unless clearly informed otherwise, will report a change in circumstances during the transitional period instead of applying for recertification, thus possibly losing the opportunity to get an immediate increase in benefits. Therefore, the Department is proposing to further amend the transition notice requirements at 7 CFR 273.12(f)(4)(ii) (now (f)(4)(vi)) to require that the notice clearly inform households that if they experience a decrease in income or an increase in expenses or household size during the transition period, they should apply for recertification.

The Department is proposing that the State agency be required to act on one change in a household's circumstances if it occurs during the transitional period. If a member of a household receiving transitional benefits moves out of the household during the transitional period and either reapplies as a new household or is reported as a new member of another household, the Department is proposing that the State agency be required to remove that member from the original household and adjust the household's benefit to reflect the new household size. This action is necessary to prevent duplicate participation by the member that has left the household receiving transitional benefits, and is the same procedure that the State agencies follow in the regular program when a household member moves from one participating household to another.

Finally, the Department is proposing to renumber current paragraph 7 CFR 273.12(f)(4)(iv) as (f)(4)(viii). The new paragraph will provide the State agency two options for moving the household out of the transitional period. First, in accordance with current rules at 7 CFR 273.12(f)(4)(iv), the State agency may issue the household an RFC and act on any information it has about the household's new circumstances in accordance with 7 CFR 273.12(c)(3). Under this option, the State agency may extend the household's certification period in accordance with 7 CFR 273.10(f)(5) unless the household's certification period has already been extended passed the maximum period specified in 7 CFR 273.10(f) in order to provide the household the full transitional benefit for which it is eligible. Alternatively, in accordance with Section 4115, the State agency may recertify the household in accordance with 7 CFR 273.14. If the household has not reached the maximum number of months in its certification period during the transitional period, the State agency may shorten the household's prior certification period in order to recertify the household. In shortening the household's certification period, the State agency must send the household a notice of expiration in accordance with 7 CFR 273.14(b). The Department does not believe that a notice of adverse action is necessary to shorten the household's certification period under these circumstances. Section 11(e)(10) of the Act (7 U.S.C. 2020(e)(10)) requires that the State agency provide a notice of adverse action to the household before taking action to reduce or terminate the household's benefits during the household's certification period. The notice of adverse action provides the household with time to file a fair hearing request to challenge the State agency's action. However, because Section 4115 authorizes State agencies to shorten a household's certification period in the final month of its transitional benefit period, the household could not effectively challenge the State agency's decision to shorten its certification period. The Department is proposing to amend current regulations at 7 CFR 273.10(f)(4) to indicate that when shortening a household's certification period in order to recertify the household at the end of its transitional benefit period, the State agency must issue a notice of expiration to the household rather than a notice of adverse action.

State agencies have asked the Department what procedure they should follow when a household returns to TANF during the transitional benefit period. The Department is proposing that under these circumstances a State agency apply the same procedures it would apply if the household had reached the final month of its transitional period. Thus, when the State agency learns that a household receiving transitional benefits has returned to TANF, the State agency may either issue an RFC and adjust the household's benefits based on information it has about the household's new circumstances and extend the household's certification period if it chooses, or it may shorten the household's certification period and require the household to undergo a recertification. Because the law does not authorize State agencies to shorten a household's certification period under these circumstances, the State agency would be required to issue a notice of adverse action rather than a notice of expiration, which the State agency may issue when the household reaches the end of its transitional period. However, to eliminate the delay associated with issuing a notice of adverse action, and to keep the procedure for when a household returns to TANF during the transitional benefit period consistent with the procedure for when a household reaches the end of its transitional period, the Department is proposing that the State agency be required to include in the transition notice a statement to the effect that if the household returns to TANF during the transitional benefit period, the State agency must either reevaluate the household's food stamp case or shorten the household's certification period and require it to undergo a recertification. The Department believes that this advanced notification that the State agency may shorten the household's food stamp certification period if it returns to TANF during the transition period is a sufficient substitute for the notice of adverse action. The new requirements will be contained in 7 CFR 273.12(f)(4)(ix).

Implementation

All of the provisions of FSRIA addressed in this rule, except Section 4401, were effective on October 1, 2002. Section 4401 has 3 different implementation dates. The provision restoring food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry was effective on October 1, 2002. The provision restoring food stamp eligibility to qualified aliens who are otherwise eligible and who have lived in the U.S. for 5 years as a qualified alien beginning on date of entry was effective April 1, 2003. The provision restoring food stamp eligibility to qualified aliens who are otherwise eligible and who are under 18 regardless of date of entry and the provision eliminating the sponsor deeming requirements for immigrant children were both effective October 1, 2003.

The Department is proposing that the changes made by this rule would be effective and implemented no later than the first day of the month 180 days after publication of the final rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 273

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

Accordingly, 7 CFR Parts 272 and 273 are proposed to be 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 § 272.2, a new paragraph (d)(1)(xvi) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(xvi) If the State agency chooses to implement the optional provisions specified in:

(A) Sections 273.2(f)(1)(xii), 273.2(f)(8)(i)(A), 273.9(d)(5), 273.9(d)(6)(i), and 273.12(a)(4) of this chapter, it must include in the Plan's attachment the options it has selected;

(B) Section 273.8(e)(19) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the resources being excluded under the provision;

(C) Section 273.9(c)(3) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of educational assistance being excluded under the provision;

(D) Section 273.9(c)(18) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of payments being excluded under the provision;

(E) Section 273.9(c)(19) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of income being excluded under the provision;

(F) Section 273.12(a)(5) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of households to whom the option applies;

(G) Section 273.12(c) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the deductions affected; and

(H) Section 273.12(f)(4)(i) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and specify the categories of households eligible for transitional benefits and the maximum number of months for which such benefits will be provided.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2:

a. Paragraph (c)(3) is amended by adding three new sentences after the second sentence.

b. Paragraph (f)(1)(xii) is amended by adding three new sentences after the third sentence.

c. Paragraph (f)(8)(i)(A) is amended by adding two new sentences after the fourth sentence and is further amended by removing in the new seventh sentence the words "The State agency shall require a household eligible for the child support deduction" and adding in their place the words "For all other households eligible for the child support deduction or exclusion, the State agency shall require the household". The additions read as follows:

§ 273.2 Office operations and application processing.

* * * * *

(c) * * *

(3) * * * If the State agency maintains a web page, it must make the application available on the web page in each language in which the State agency makes a printed application available. The State agency must provide on the web page the addresses and phone numbers of all State food stamp offices and a statement that the household should return the application form to its nearest local office. The applications must be accessible to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794. * * *

* * * * *

(f) * * *

(1) * * *

(xii) * * * For households that pay their child support exclusively through their State CSE agency, the State agency may rely solely on information provided by that agency in determining a household's legal obligation to pay child support, the amount of its obligation and amounts the households has actually paid. Before the State agency may use the CSE agency's information, the household must sign a statement authorizing release of the household's child support payment records to the State agency. State agencies that choose to rely solely on information provided by their state CSE agency in accordance with this paragraph (f)(1)(xii) must specify in their state plan of operation that they have selected this option. * * *

* * * * *

(8) * * *

(i) * * *

(A) * * * For households eligible for the child support deduction or exclusion, the State agency may rely solely on information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. State agencies that choose to rely solely on information provided by their state CSE agency in accordance with this paragraph (f)(8)(i)(A) must specify in their state plan of operation that they have selected this option. * * *

* * * * *

4. In § 273.4:

a. Paragraphs (a)(5)(ii)(B) through (a)(5)(ii)(F) are amended by removing the second sentence of each paragraph.

b. Paragraph (a)(5)(ii)(H) is amended by removing the words "on August 22, 1996, was lawfully residing in the U.S., and is now" and adding in their place the word "is."

c. Paragraph (a)(5)(ii)(J) is amended by removing the words "on August 22, 1996, was lawfully residing in the U.S. and is now" and adding in their place the word "is."

d. A new paragraph (a)(5)(ii)(K) is added.

e. Paragraph (a)(6) is amended by removing the reference "(a)(5)(ii)(H) through (a)(5)(ii)(J)" and adding in its place the reference (a)(5)(ii)(I)".

f. Paragraph (c)(2)(v) is amended by adding a new sentence to the end of the paragraph.

g. Paragraph (c)(3)(iv) is amended by adding two new sentences after the first sentence and is further amended by removing the semi-colon at the end of the last sentence and adding in its place a period, and by adding three sentences to the end of the paragraph.

h. A new paragraph (c)(3)(vi) is added.

The additions read as follows:

§ 273.4 Citizenship and alien status.

(a) * * *

(5) * * *

(ii) * * *

(K) An alien who has resided in the U.S. as a qualified alien as defined in paragraph (a)(5)(i) of this section for 5 years.

* * * * *

(c) * * *

(2) * * *

(v) * * * The State agency must use the same procedure to determine the amount of deemed income and resources to exclude in the case of a sponsored alien who is exempt from deeming in accordance with paragraph (c)(3)(vi) of this section.

(3) * * *

(iv) * * * Prior to determining whether an alien is indigent, the State agency must explain the purpose of the determination to the alien and/or household representative and provide the alien and/or household representative the opportunity to refuse the determination. If the household refuses the determination, the State agency will not complete the determination and will deem the sponsor's income and resources to the alien's household in accordance with paragraph (c)(2) of this section. * * * State agencies may develop an administrative process under which information about the sponsored alien is not shared with the Attorney General or the sponsor without the sponsored alien's consent. The State agency must inform the sponsored alien of the consequences of failure to provide such consent. If the sponsored alien fails to provide consent, he or she shall be ineligible pursuant to paragraph (c)(5) of this section, and the State agency shall determine the eligibility and benefit level of the remaining household members in accordance with § 273.11(c).

* * * * *

(vi) An alien under 18 years of age.

* * * * *

5. In § 273.8:

a. Paragraph (b) is amended by adding after the words "for households including" the words "one or more disabled members or".

b. A new paragraph (e)(19) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) * * *

(19) At State agency option, any resources that the State agency excludes when determining eligibility or benefits for Temporary Assistance for Needy Families cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under section 1931 of the Social Security Act, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grand-fathered under section 404(a)(2) of the Social Security Act) except licensed vehicles not excluded under section 5(g)(2)(C) or (D) of the Food Stamp Act of 1977, as amended and cash on hand, amounts in any account in a financial institution that are readily available to the household, including money in checking or savings accounts, savings certificates, stocks, or bonds. The term "readily available" applies to resources, in a financial institution, that can be converted to cash in a single transaction, without going to court to obtain access or incurring a financial penalty other than loss of interest. State agencies may exclude deposits in individual development accounts (IDAs) made under written agreements that restrict the use of such deposits to home purchase, higher education or starting a business. State agencies may also exclude deposits in individual retirement accounts (IRAs) if the terms of those accounts impose a penalty, other than forfeiture of interest, for early withdrawal. A State agency that chooses to exclude resources under this paragraph (e)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded.

* * * * *

6. In § 273.9:

a. A new paragraph (c)(3)(v) is added.

b. New paragraphs (c)(17), (c)(18) and (c)(19) are added.

c. Paragraph (d)(1) is revised.

d. Paragraph (d)(2) is amended by revising the second sentence.

e. Paragraph (d)(5) is revised.

f. Paragraph (d)(6) is amended by revising the paragraph heading.

g. Paragraph (d)(6)(i) is amended by revising the first sentence and adding a new second sentence.

h. Paragraph (d)(6)(iii)(C) is amended by adding before the period in the third sentence "unless the State agency mandates use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section".

i. Paragraph (d)(6)(iii)(E) is amended by removing the fifth sentence and adding four new sentences after the second sentence.

j. Paragraph (d)(6)(iii)(F) is amended by revising the first sentence and by removing the word "However" at the beginning of the second sentence.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) * * *

(3) * * *

(v) At its option, the State agency may exclude any educational assistance that must be excluded under its State Medicaid rules that would not already be excluded under this section. A State agency that chooses to exclude educational assistance under this paragraph (c)(3)(v) must specify in its State plan of operation that it has selected this option and provide a description of the educational assistance that is being excluded. The provisions of paragraphs (c)(3)(ii), (c)(3)(iii) and (c)(3)(iv) of this section do not apply to income excluded under this paragraph (c)(3)(v).

* * * * *

(17) Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. However, at its option, the State agency may allow households a deduction for such child support payments in accordance with paragraph (d)(5) of this section rather than an income exclusion.

(18) At the State agency's option, any State complementary assistance program payments excluded for the purpose of determining eligibility under section 1931 of the Social Security Act for a program funded under Title XIX of the Social Security Act. A State agency that chooses to exclude complementary assistance program payments under this paragraph (c)(18) must specify in its State plan of operation that it has selected this option and provide a description of the types of payments that are being excluded.

(19) At the State agency's option, any types of income that the State agency excludes when determining eligibility or benefits for Temporary Assistance for Needy Families cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under section 1931 of the Social Security Act, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grand-fathered under section 404(a)(2) of the Social Security Act) except that the State agency shall not exclude wages or salaries; gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(iii) of this section; benefits under Title I, II, IV, XIV or XVI of the Social Security Act, including supplemental security income (SSI) benefits, Temporary Assistance for Needy Families (TANF) benefits, and foster care and adoption payments; regular payments from a government source; worker's compensation; child support payments made to the household from a nonhousehold member; support or alimony payments made to the household from a nonhousehold member; annuities; pensions; retirement benefits; disability benefits; or old age or survivor benefits; and monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under § 273.8(e)(8). Payments or allowances a household receives from an intermediary that are funded from a government source are considered payments from a government source. The State agency must exclude for food stamp purposes the same amount of income it excludes for TANF or

Medicaid purposes. A State agency that chooses to exclude income under this paragraph (c)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded.

(d) * * *

(1) *Standard deduction.* (i) *48 States, District of Columbia, Alaska, Hawaii, and the Virgin Islands.* Effective October 1, 2002, in the 48 States and the District of Columbia, Alaska, Hawaii, and the Virgin Islands, the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income standard for each household size established under paragraph (a)(2) of this section rounded to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(ii) *Guam.* Effective October 1, 2002, in Guam, the standard deduction for household sizes one through six shall be equal to 8.31 percent of double the monthly net income standard for each household size for the 48 States and the District of Columbia established under paragraph (a)(2) of this section rounded to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(iii) *Minimum deduction levels.* Notwithstanding paragraphs (d)(1)(i) and (d)(1)(ii) of this section, the standard deduction in any year for each household in the 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands shall not be less than $134, $229, $189, $269, and $118, respectively.

(2) * * * Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction, except that the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion in paragraph (c)(17) of this section.

* * * * *

(5) *Optional child support deduction.* At its option, the State agency may provide a deduction, rather than the income exclusion provided under paragraph (c)(17) of this section, for legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction. A State agency that chooses to provide a child support deduction rather than an exclusion in accordance with this paragraph (d)(5) must specify in its State plan of operation that it has chosen to provide the deduction rather than the exclusion.

(6) *Shelter costs.* (i) *Homeless shelter deduction.* A State agency may provide a standard homeless shelter deduction of $143 a month to households in which all members are homeless individuals but are not receiving free shelter throughout the month. A State agency that chooses to provide a homeless household shelter deduction must specify in its State plan of operation that it has selected this option. * * *

* * * * *

(iii) * * *

(E) * * * If the State agency chooses to mandate use of standard utility allowances, it must provide a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency also must not prorate a standard utility allowance that includes heating or cooling costs provided to a household that lives and shares heating or cooling expenses with others. In determining whether the standard utility allowances increase program costs, the State agency shall not consider any increase in costs that results from providing a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency shall also not consider any increase in costs that results from providing a full (*i.e.*, not prorated) standard utility allowance that includes heating or cooling costs to a household that lives and shares heating or cooling expenses with others. * * *

(F) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency must prorate a standard that includes heating or cooling expenses among the household and the other individual, household, or both, except that the State agency shall not prorate the standard for such households if the State agency mandates use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section. * * *

7. In § 273.10:

a. The introductory text of paragraph (d) is revised.

b. Paragraph (d)(8) is revised.

c. Paragraph (e)(1)(i)(B) is amended by adding a new sentence to the end of the paragraph.

d. Paragraph (e)(1)(i)(F) is revised.

e. Paragraph (f)(4) is revised.

The revisions and addition read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) * * * Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs as described in § 273.9.

* * * * *

(8) *Optional child support deduction.* If the State agency opts to provide households with a deduction rather than an income exclusion for legally obligated child support payments in accordance with § 273.9(d), the State agency may budget such payments prospectively, in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) * * *

(1) * * *

(i) * * *

(B) * * * If the State agency has chosen to treat legally obligated child support payments as an exclusion in accordance with paragraph (c)(17) of this section, multiply the excluded earnings used to pay child support by 20% and subtract that amount from the total gross monthly income.

* * * * *

(F) If the State agency has chosen to treat legally obligated child support payments as a deduction rather than an exclusion in accordance with § 273.9(d)(5), subtract allowable monthly child support payments in accordance with § 273.9(d)(5).

* * * * *

(f) * * *

(4) *Shortening certification periods.* The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, the household has not complied with the requirements of § 273.12(c)(3), or the State agency must shorten the household's certification

period to comply with the requirements of § 273.12(a)(5). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency must issue a notice of adverse action as provided in § 273.13 to shorten a participating household's certification period in connection with imposing the simplified reporting requirement. The State agency may not use the Notice of Expiration to shorten a certification period, except that the State agency must use the notice of expiration to shorten a household's certification period when the household is receiving transitional benefits under § 273.12(f)(4), has not reached the maximum allowable number of months in its certification period during the transitional period, and the State agency has chosen to recertify the household in accordance with § 273.12(f)(4)(vi)(B).

* * * * *

8. In § 273.11:

a. Paragraph (c)(1)(ii) is amended by redesignating paragraphs (c)(1)(ii)(B) and (c)(1)(ii)(C) as (c)(1)(ii)(C) and (c)(1)(ii)(D), respectively, and adding a new paragraph (c)(1)(ii)(B).

b. Paragraph (c)(2)(iv) is amended by redesignating paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(C) as paragraphs (c)(2)(iv)(C) and (c)(2)(iv)(D), respectively, and adding a new paragraph (c)(2)(iv)(B).

The additions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Assigning a standard deduction to the household;

* * * * *

(2) * * *

(iv) * * *

(B) Assigning a standard deduction to the household;

* * * * *

9. In § 273.12:

a. Paragraph (a)(1) introductory text is amended by adding a sentence after the second sentence;

b. Paragraph (a)(1)(vi) is amended by adding a new sentence to the end of the paragraph;

c. Paragraph (a)(1)(vii) is removed, and paragraph (a)(1)(viii) is redesignated as paragraph (a)(1)(vii);

d. Paragraph (a)(4) introductory text is amended by removing the first sentence and adding three new sentences to the beginning of the paragraph.

e. Paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(6) and (a)(7), respectively, and a new paragraph (a)(5) is added;

f. Newly redesignated paragraph (a)(6) introductory text is amended by removing the first sentence and by adding in its place two new sentences;

g. A new paragraph (b)(1)(vi) is added;

h. Paragraph (b)(2) is revised;

i. The introductory text of paragraph (c) is amended by:

1. Removing the word "shall" in the second sentence and adding in its place the word "may";

2. Removing the word "However," at the beginning of the fourth sentence; and

3. Adding seven new sentences after the first sentence.

j. Paragraph (f)(4) is revised.

The revisions and additions read as follows:

§ 273.12 Requirements for change reporting households.

(a) * * *

(1) * * * Simplified reporting households are subject to the procedures as provided in paragraph (a)(5) of this section. * * *

* * * * *

(vi) * * * However, the State agency may remove this reporting requirement if it has chosen to rely solely on information provided by the State's CSE agency in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid in accordance with § 273.2(f)(1)(xii).

* * * * *

(4) For households eligible for the child support exclusion at § 273.9(c)(17) or deduction at § 273.9(d)(5), the State agency may rely solely on information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. State agencies that choose to rely solely on information provided by their State CSE agency in accordance with this paragraph (a)(4) must specify in their State plan of operation that they have selected this option. If the State agency chooses not to rely solely on information provided by its State CSE agency, the State agency may require the household to report child support payment information on a change report, a monthly report, or a quarterly report. * * *

* * * * *

(5) The State agency may establish a simplified reporting system in lieu of the change reporting requirements specified under paragraph (a)(1) of this section. The following requirements are applicable to simplified reporting systems:

(i) *Included households.* The State agency may include any household certified for at least 4 months within a simplified reporting system. The State agency may not require households with no earned income in which all adult members are elderly or disabled, migrant or seasonal farm worker households, or households in which all members are homeless individuals to submit periodic reports in connection with the simplified reporting requirement. The certification periods of such households must be at least 4 months, but not more than 6 months.

(ii) *Notification of simplified reporting requirement.* The State agency must notify households of the simplified reporting requirements, including the consequences of failure to file a report, at initial certification, recertification, and whenever the State agency transfers the household to simplified reporting during a certification period.

(iii) *Periodic report.* (A) Except for households exempt from periodic reporting in accordance with paragraph (a)(5)(i) of this section, the State agency may require a household exempt from change reporting requirements in accordance with paragraph (a)(5)(i) of this section to submit a periodic report on its circumstances from once every 4 months up to once every 6 months. The State agency need not require a household certified for 6 months or less to submit a periodic report during its certification period. However, a household certified for more than 6 months must submit a periodic report at least once every 6 months.

(B) The periodic report form must request from the household information on any changes in circumstances in accordance with paragraphs (a)(1)(i) through (a)(1)(vii) of this section.

(C) If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

(D) If a household fails to file a complete report by the specified filing date, the State agency will send a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated. The State agency may combine the notice of a missing or incomplete report with the adequate notice of termination described in paragraph (a)(5)(iii)(C) of this section.

(E) The periodic report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that a household required to report less frequently than quarterly shall report when its monthly gross income exceeds the monthly gross income limit for its household size in accordance with paragraph (a)(5)(iv) of this section, and able-bodied adults subject to the time limit of § 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(iv) *Reporting when gross income exceeds 130 percent of poverty.* A household subject to simplified reporting in accordance with paragraph (a)(5)(i) of this section, whether or not it is required to submit a periodic report, must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9(a)(1). In determining household size for this paragraph (a)(5)(iv), the household shall use the household size that existed at the time of its most recent certification or recertification.

(v) *State agency action on changes reported outside of a periodic report.* The State agency must act when the household reports that its gross monthly income exceeds the gross monthly income limit for its household size. For other changes, the State agency need not act if the household reports a change for another public assistance program in which it is participating and the change does not trigger action in that other program but results in a decrease in the household's food stamp benefit. The State agency must act on all other changes reported by a household outside of a periodic report in accordance with one of the following two methods:

(A) the State agency must act on any change in household circumstances in accordance with paragraph (c) of this section, or

(B) the State agency must act on any change in accordance with paragraph (c)(1) of this section if it would increase the household's benefits. The State agency must not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed in accordance with § 273.13(b)(12);

(2) The State agency has information about the household's circumstances considered verified upon receipt; or

(3) There has been a change in the household's PA grant, or GA grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2).

(vi) *State plan requirement.* A State agency that chooses to use simplified reporting procedures in accordance with this section must state in its state plan of operation that it has implemented simplified reporting and specify the types of households to whom the reporting requirement applies.

(6) In accordance with § 273.10(d)(4), the State agency may rely solely on information provided by the State's Title IV–D agency in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid. If the State agency does not take this option but requires a household who is eligible to receive a child support exclusion or deduction in accordance with § 273.9(c)(17) or § 273.9(d)(5), respectively, to report information necessary for the expense or deduction, it may require the household to report such information on a change report, a periodic report, a monthly report or a quarterly report. * * *

* * * * *

(b) * * *

(1) * * *

(vi) If the State agency has chosen to disregard reported changes that affect some deductions in accordance with paragraph (c) of this section, a statement explaining that the State agency will not change certain deductions until the household's next recertification and identifying those deductions.

(2) The quarterly report form, including the form for the quarterly reporting of the child support obligation, and the periodic report form used in simplified reporting under paragraph (a)(2)(ii) of this section, must be written in clear, simple language, and must meet the bilingual requirements described in § 272.4(b) of this chapter. In addition the form must specify the date by which the agency must receive the form and the consequences of submitting a late or incomplete form. The form (or an attachment) must specify the verification the household must submit with the form, inform the household where to call for help in completing the form, and include a statement to be signed by a member of the households indicating his or her understanding that the information provided may result in reduction or termination of benefits. The form should also include a brief description of the Food Stamp Program fraud penalties. If the State agency has chosen to disregard reported changes that affect some deductions in accordance with paragraph (c) of this section, the form should include a statement explaining that the State agency will not change certain deductions until the household's next recertification and identifying those deductions.

* * * * *

(c) * * * However, if the household reports a change during the certification period, other than a change in earnings or residence, that would affect the household's eligibility for, or amount of, a deduction under § 273.9(d), the State agency may at its option disregard the change and continue to provide the household the deduction amount that was established at certification until the household's next recertification. In the case of a household assigned a 24-month certification period in accordance with § 273.10(f)(1) and (f)(2), the State agency must act on any disregarded changes reported during the first 12 months of the certification period at the required 12-month contact for elderly and disabled households and in the thirteenth month of the certification period for households residing on a reservation who are required to submit monthly reports. Changes reported during the second 12 months of the certification period can be disregarded until the household's next recertification. If the State agency chooses to act on changes that affect a deduction, it may not act on changes in only one direction, *i.e.*, changes that only increase or decrease the amount of the deduction, but must act on all changes that affect the deduction. The State agency may disregard changes reported by the household in accordance with paragraph (a)(1) of this section and changes it learns of from a source other than the household. The State agency must not disregard changes in earned income or shelter costs arising from a change in residence until the household's next recertification but must act on those changes in accordance with paragraphs (c)(1) and (c)(2) of this section. A State agency that chooses to postpone action on reported changes in deductions in accordance with this paragraph (c) must state in its State plan of operation that it has selected this option and specify the deductions affected. * * *

* * * * *

(f) * * *

(4) *Transitional Benefits Alternative.* (i) The State agency may elect to provide households leaving TANF with transitional food stamp benefits as provided in this paragraph (f)(4). A State agency that chooses to provide transitional benefits must state in its State plan of operation that it has selected this option and specify the categories of households eligible for such benefits and the maximum number of months for which transitional benefits will be provided. The State agency may choose to limit transitional benefits to households in which all members had been receiving TANF, or it may provide such benefits to any household in which at least one member had been receiving TANF. The State agency may not provide transitional benefits to a household which is leaving TANF when:

(A) The household is leaving TANF due to a TANF sanction;

(B) The household is a member of a category of households designated by the State agency as ineligible for transitional benefits; or

(C) All household members are ineligible to receive food stamps for any of the following reasons:

(*1*) Disqualified for intentional program violation in accordance with § 273.16;

(*2*) Ineligible for failure to comply with a work requirement in accordance with § 273.7;

(*3*) An SSI recipient in a cash-out state in accordance with § 273.20;

(*4*) Ineligible student in accordance with § 273.5;

(*5*) Ineligible alien in accordance with § 273.4;

(*6*) Fails to provide information necessary for making determination of eligibility or for completing any subsequent review of its eligibility in accordance with § 273.2(d) and § 273.21(m)(1)(ii);

(*7*) Ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the program as provided at § 273.8(h);

(*8*) At State option, disqualified from food stamps for failure to perform an action under Federal State or local law relating to a means-tested public assistance program in accordance with § 273.11(k);

(*9*) Disqualified for receipt of multiple food stamps;

(*10*) Disqualified for being a fleeing felon in accordance with § 273.11(n);

(*11*) At State option, ineligible for failing to cooperate with child support agencies in accordance with § 273.11(o) and (p);

(*12*) At State option, ineligible for being delinquent in court ordered child support in accordance with 273.11(q); or

(*13*) Able-bodied adults without dependents who fail to comply with the requirements of § 273.24.

(ii) The State agency must use procedures at paragraph (f)(3) of this section to determine the continued eligibility and benefit level of households denied transitional benefits under this paragraph (f)(4).

(iii) When a household leaves TANF, the State agency may freeze for up to 5 months the household's benefit amount after making an adjustment for the loss of TANF. This is the household's transition period. Before initiating the transition period, the State agency must recalculate the household's food stamp benefit amount by removing the TANF payment from the household's food stamp income. At its option, the State agency may also adjust the benefit initially and at any time during the transition period to account for changes in household circumstances that it learns from another State or Federal means-tested assistance program in which the household participates. To provide the full transitional period, the State agency may extend the certification period for up to 5 months and may extend the household's certification period beyond the maximum periods specified in § 273.10(f).

(iv) When a household leaves TANF, the State agency at its option may end the household's existing certification period and assign the household a new certification period that conforms to the transitional period. The recertification requirements at § 273.14 that would normally apply when the household's certification period ends must be postponed until the end of the new certification period. If the transition period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action under § 273.10(f)(4) but shall specify in the transitional notice required under paragraph (f)(4)(v) of this section that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

(v) At any time during the transitional period, the household may apply for recertification. If a household applies for recertification during its transitional period, the State agency shall observe the following procedures:

(A) The State agency must schedule an interview in accordance with § 273.2(e);

(B) The State agency must provide the household with a notice of required verification in accordance with § 273.2(c)(5) and provide the household a minimum of 10 days to provide the required verification.

(C) If the household fails to undergo an interview or submit required verification within the timeframes established by the State in accordance with paragraphs (A) and (B), or the household is determined to be ineligible for the program, the State agency will deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the State agency will either recertify the household or send an RFC in accordance with paragraph (f)(4)(vii) of this section;

(D) If the household is determined eligible for the regular Food Stamp Program but is entitled to a benefit lower than its transitional benefit, the State agency shall encourage the household to withdraw its application for recertification and continue to receive transitional benefits. If the household chooses not to withdraw its application, the State agency shall complete the recertification process and issue the household the lower benefit beginning with the first month of the new certification period.

(E) If the household is determined eligible for the program, its new certification period will begin with the first day of the month following the month in which the household submitted the application for recertification. The State agency must issue the household full benefits for that month. For example, if the household applied for recertification on the 25th day of the third month of a five-month transitional period, and the household is determined eligible for the regular Food Stamp Program, the State agency will begin the household's new certification period on the first day of what would have been the fourth month of the transitional period.

(F) If the household is eligible for the regular Food Stamp Program and entitled to benefits higher than its transitional benefits, and the State agency has already issued the household transitional benefits for the first month of its certification period, the State agency must issue the household a supplement.

(G) Applications for recertification submitted in the final month of the transitional period must be processed in accordance with current regulations at 7 CFR 273.14.

(vi) The State agency must issue a transition notice (TN) to the household that includes the following information:

(A) A statement informing the household that it will be receiving transitional benefits and the length of its transitional period;

(B) A statement informing the household that it has the option of applying for recertification at any time during the transitional period. The household must be informed that if it does not apply for recertification during the transitional period, at the end of the transitional period the State agency must either reevaluate the household's food stamp case or require the household to undergo a recertification.

(C) A statement that if the household returns to TANF during its transitional benefit period, the State agency will either reevaluate the household's food stamp case or require the household to undergo a recertification. However, if the household has been assigned a new certification period in accordance with paragraph (f)(4)(iii) of this section, the notice must inform the household that it must be recertified if it returns to TANF during its transitional period.

(D) A statement explaining any changes in the household's benefit amount due to the loss of TANF income and/or changes in household circumstances learned from another State or Federal means-tested assistance program;

(E) A statement informing the household that it is not required to report and provide verification for any changes in household circumstances until the deadline established in accordance with paragraph (c)(3) of this section or its recertification interview; and

(F) A statement informing the household that the State agency will not act on changes that the household reports during the transitional period prior to the deadline specified in paragraph (f)(4)(vi)(E) of this section and that if the household experiences a decrease in income or an increase in expenses or household size prior to that deadline, the household should apply for recertification.

(vii) If the household does report changes in its circumstances during the transition period, the State agency may at its option adjust the household's benefit amount in accordance with paragraph (c) of this section or make the change effective the month following the last month of the transitional period. However, in order to prevent duplicate participation, the State agency must act to change the household's transitional benefit when a household member moves out of the household and either reapplies as a new household or is reported as a new member of another household.

(viii) In the final month of the transitional benefit period, the State agency must do one of the following:

(A) Issue the RFC specified in paragraph (c)(3) of this section and act on any information it has about the household's new circumstances in accordance with paragraph (c)(3) of this section. The State agency may extend the household's certification period in accordance with § 273.10(f)(5) unless the household's certification period has already been extended past the maximum period specified in § 273.10(f) in accordance with paragraph (f)(4)(iii) of this section; or

(B) Recertify the household in accordance with § 273.14. If the household has not reached the maximum number of months in its certification period during the transitional period, the State agency may shorten the household's prior certification period in order to recertify the household. When shortening the household's certification period pursuant to this section, the State agency must send the household a notice of expiration in accordance with § 273.14(b).

(ix) If a household receiving transitional benefits returns to TANF during the transitional period, the State agency shall end the household's transitional benefits and follow the procedures in paragraph (f)(4)(viii) of this section to determine the household's continued eligibility and benefits for the Food Stamp Program. However, for a household assigned a new certification period in accordance with paragraph (f)(4)(iv) of this section, the household must be recertified if it returns to TANF during its transitional period.

10. In § 273.21:

a. Paragraph (f)(2)(iv) is amended by removing the words "The State agency" at the beginning of the first sentence and adding in their place the words "If the State agency chooses to act on a change in one or more deductible expenses, it"; and is further amended by adding a new sentence at the beginning of the paragraph.

b. Paragraph (f)(2)(v) is amended by removing the words "The State agency" at the beginning of the second sentence and adding in their place the words "If the State agency chooses to act on a change in one or more deductible expenses, it";

c. A new paragraph (h)(2)(ix) is added; and

d. Paragraph (j)(1)(vii)(C) is revised.

The revision and additions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

* * * * *

(f) * * *

(2) * * *

(iv) The State agency at its option may disregard reported changes in deductible expenses, except for changes in shelter costs related to a change in residence, and continue to provide the household the deduction amount that was established at certification until the household's next recertification. * * *

* * * * *

(h) * * *

(2) * * *

(ix) If the State agency has chosen to disregard reported changes that affect some deductions in accordance with paragraph (j)(1)(vii)(C) of this section, include a statement explaining that the State agency will not change certain deductions until the household's next recertification and identifying those deductions.

* * * * *

(j) * * *

(1) * * *

(vii) * * *

(C) Deductions as billed or averaged from the corresponding budget month, including those shelter costs billed less often than monthly which the household has chosen to average, except that the State agency at its option may disregard reported changes in deductible expenses, except for changes in shelter costs related to a change in residence, and continue to provide the household the deduction amount that was established at certification until the household's next recertification.

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Dated: March 31, 2004.

Eric M. Bost,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 04–8414 Filed 4–15–04; 8:45 am]

BILLING CODE 3410–30–P