DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[FNS–2007–0006]

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: Final rule.

SUMMARY: This final rule implements 11 provisions of the Farm Security and Rural Investment Act of 2002 (FSRIA) that establish new eligibility and certification requirements for the receipt of food stamps. The provisions of the final rule will simplify program administration, allow States greater flexibility, and provide enhanced access to eligible populations. This rule will 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 and resources 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 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 extend simplified reporting of changes to all households; 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 cease to receive 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 years of age regardless of date of entry, or have lived in the United States for 5 years as qualified aliens beginning on the date of entry.

DATES: *Effective Date:* This final rule is effective April 1, 2010.

Implementation Dates:

1. Sections 273.4(a)(6)(ii)(H), 273.8(b), and 273.9(d)(1)—amendments of this final rule were to be implemented October 1, 2002.
2. Sections 273.4(a)(6)(ii)(B) through (a)(6)(ii)(F) and 273.4(a)(6)(iii)—amendments of this rule were to be implemented April 1, 2003.
3. Sections 273.4(a)(6)(ii)(J) and 273.4(c)(3)(vi)—amendments of this rule were to be implemented October 1, 2003.
4. State agencies must implement §§ 273.4(c)(2)(v), 273.4(c)(3)(iv), 273.4(c)(3)(vii), 273.9(b)(1)(vi), and 273.9(c)(3)(ii)(A) amendments no later than August 1, 2010.
5. State agencies may implement all other amendments on or after April 1, 2010.
6. States that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

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SUPPLEMENTARY INFORMATION:

Background

The Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, enacted 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. On April 16, 2004, we published a rule proposing to codify (published in the Code of Federal Regulations) the eligibility and certification requirements of the FSRIA. The period for comment on the proposed rule ended June 15, 2004. We received comments from 19 State and local agencies, 90 advocate groups, and 6 individuals. In this final rule, we will not discuss comments that supported our proposals. We will not discuss, in detail, comments that concerned merely technical corrections or inadvertent omissions; we have simply made the corrections. We will not discuss several provisions on which we received no comments. We will adopt these provisions as proposed. For a full understanding of the background of the provisions in this rule, see the proposed rulemaking which was published in the **Federal Register** on April 16, 2004 (69 FR 20724). With the exceptions noted above, we will discuss each provision and the comments made.

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

Section 11(e)(2)(B)(ii) of the Food Stamp Act (7 U.S.C. 2020(e)(2)(B)(ii)) requires State agencies to develop a Food Stamp Program application. Section 4114 of FSRIA amended Section 11(e)(2)(b)(ii) to require 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. This final rule amends current regulations at 7 CFR 273.2(c)(3) to implement this provision. Section 4114 of FSRIA also required State agencies to provide 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.

Commenters suggested other information that the Department should require State agencies to place on their Web site such as fax numbers and the service area of each local office or some other means to connect individuals to the correct local office. We note that many State agencies do provide detailed local office information on their Web sites. However, we decided that requiring specific information about each local office such as a fax number and the service area of each office can be unduly burdensome to the State agencies, and should be a state option rather than a Federal mandate. The purpose of the statutory provision is to allow households to obtain a food stamp application without having to visit the local office and provide applicants with information to assist them in the application process. We believe that the commenter's proposal is best handled at the State level.

The Department proposed to include a reference to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) in 7 CFR 273.2(c)(3) to ensure that documents on a State's Web site are accessible to persons with disabilities. Commenters suggested that the regulatory language specify examples of the kinds of services States must offer in order to make their applications accessible to people with disabilities. They also suggested that the Department reference helpful guidance written by the Architectural and Transportation Barriers Compliance Board on improving access to individuals with disabilities and how to comply with such guidance. Finally, they wanted the Department to provide information in the preamble of the final rule about various assessment tools available to determine whether or not a State meets accessibility standards.

Although the Department appreciates these recommendations, it is impracticable to include such guidance in a regulation due to its extensive detail. As stated by the commenters, other agencies have already provided helpful guidance on improving access to individuals with disabilities. The Department encourages State agencies that administer the Food Stamp Program to consult information such as the guidance written by the Architectural and Transportation Barriers Compliance Board in the development of accessible systems.

Commenters asked the Department to provide a report on State compliance with this provision in the preamble to the final rule. The Department will not provide such a report in the final rule because of the ever changing nature of State systems. Additionally, the Department does not provide reports in the **Federal Register** on State compliance with other regulatory provisions; therefore, it is not appropriate to provide a report on this provision.

However, the Department has made it clear to all State agencies that the information provided on their Web site must be easily accessible. The Department also developed a page on its own Web site to assist participants in accessing program information for all 50 States and the District of Columbia. The Department's Web site contains a map and list of all 50 States and the District of Columbia. Participants can click on their State and obtain, at a minimum, an English language application form, acquire the food stamp hotline number for their State, and find the nearest food stamp office.

Partial Restoration of Benefits to Legal Immigrants—7 CFR 273.4

1. Expanded Eligibility for Certain Noncitizens

Section 4401 of FSRIA substantially expanded 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). That section lists the groups eligible for food stamps which include qualified aliens, as defined under 7 CFR 273.4(a)(5)(i), who meet at least one of the criteria specified at 7 CFR 273.4(a)(5)(ii). Some of the criteria make a noncitizen eligible for only 7 years, while other criteria make the noncitizen permanently eligible for the program. The proposed rule contained a detailed discussion of these requirements; interested parties can refer to the current regulations and proposed rule for further discussion.

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. As written, Section 4401 could be read to require that the alien has been in a qualified status at the time he or she entered the United States in order to be eligible under this provision. However, in reviewing the legislative history behind FSRIA in the development of the proposed rule, the Department came to the conclusion that it was not the intent of Congress to deny the benefits of the provision to aliens who are not qualified when they enter the United States but later attain qualified status. Therefore, the Department proposed to amend current regulations at 7 CFR 273.4(a)(5)(ii) to extend eligibility for the Food Stamp Program to any alien who has resided in the United States in a qualified alien status as defined in PRWORA for 5 years.

While most commenters approved of the language in the proposed rule, they asked the Department to clarify the 5-year residency requirement to incorporate guidelines regarding the calculation of the 5-year period. First, they asked us to clarify that the 5 years do not have to be consecutive. Second, they asked us to clarify that temporary absences of less than 6 months from the United States, with no intention of abandoning U.S. residency, do not terminate or interrupt the individual's period of U.S. residency. Third, they asked us to clarify that prior residence in any one or any combination of the immigrant statuses that confer eligibility counts toward the 5-year residency policy. Finally, to ensure that, when the U.S. Citizenship and Immigration Services grants qualified status retroactively, the retroactive time counts toward the 5-year requirement. The Department has considered these requests and the final rule reflects the recommended clarifications.

The 5-year residency rule 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 (for example, refugee or asylee status) set out in PRWORA and at current regulations 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F). Because the 5-year residency rule effectively eliminates the 7-year time limit on food stamp eligibility, the Department proposed to amend current regulations at 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F) to remove the reference to the 7-year time limit. One commenter noted that while it is technically correct to strike the now irrelevant 7-year time limit language, they felt that the proposed regulations would have required a confusing, redundant two-pronged test. They suggested that the changes proposed by Section 4401 gave FNS an opportunity for a substantial reorganization of 7 CFR 273.4(a).

The commenter suggested that the Department move the "refugee" group to its own unencumbered section under 7 CFR 273.4(a) and separately group the remaining qualified immigrants who must meet the two-pronged test. They felt that eligibility workers would have difficulty determining what rule is applicable to the household and become confused about how a member of a refugee group can be both "qualified" and "eligible" under the same set of facts but other non-citizens must meet a two-pronged test involving age, duration of status, disability, work history or veteran status. The commenter also recommended that the Department insert an additional provision to resolve any confusion around situations where an individual presents proof of lawful permanent residence (LPR) such as a Permanent Resident Card, I–551, which may have a "date of entry" based on when LPR status was granted, but the immigrant may have previously entered in refugee or asylee status.

FNS has considered these suggestions, but maintains that the two-pronged test is a statutory requirement that must be addressed in the regulations. FNS finds that State agencies generally simplify their eligibility requirements for eligibility workers. We have attempted to simplify this provision by listing the requirements for eligibility for qualified aliens in one section at, 7 CFR 273.4(a)(6)(ii). In this section, we delete any reference to the 7-year time limit and delineate between those aliens that do not have to meet the 5-year residency requirement at 7 CFR 273.4(a)(6)(ii)(A)–273.4(a)(6)(ii)(J) and those that must meet the 5-year residency requirement at 7 CFR 273.4(a)(6)(iii) in order to establish eligibility. We did not relocate the refugee group to a separate group as there are other exceptions to the 5-year residency requirement and we felt that all of the eligibility requirements for qualified aliens should be grouped together. We did not add a provision regarding the date of entry as current regulations at 7 CFR 273.4(a)(6)(iv) address aliens who change from one status to another.

The 5-year residency rule also makes parolees and conditional entrants who retain qualified alien status for 5 years eligible for the program. Under the current rules, these two categories of qualified aliens have to meet one of the requirements under 7 CFR 273.4(a)(5)(ii) in addition to meeting the requirements for parolee or conditional entrant status. The Department proposed to amend the current regulations to accommodate this change in the law. These aliens are listed as qualified aliens in paragraph 273.4(a)(6)(i) of the final rule and are subject to the 5-year residency requirement listed at paragraph 273.4(a)(6)(iii) of the final rule. Section 4401 also effectively reduces the applicability of the 40 quarters of work requirement for aliens lawfully admitted for permanent residence under PRWORA and current regulation 7 CFR 273.4(a)(5)(ii)(A). Under the 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 5 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 5 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.

One commenter asked the Department to conform its regulations to those of the Supplemental Security Income (SSI) program and provide that quarters credited from a spouse are not lost if the couple divorces unless food stamp benefits actually terminate. The commenter believes that USDA should conform its policy to that of other programs, including SSI, to further simplify program administration. According to the commenter, individuals who meet the non-citizen requirements for SSI based on the quarters of a spouse retain SSI eligibility upon divorce but lose food stamp eligibility at their next recertification.

Pursuant to 8 U.S.C. 1645, when determining the number of qualifying quarters of coverage under title II of the Social Security Act (SSA) (42 U.S.C. 401, *et. seq.*), an alien shall be credited with all of the qualifying quarters worked by a spouse of such alien during their marriage if the alien remains married to such spouse. Under the guidelines of the Social Security Administration, provided in Section SI 00502.135 of the Program Operations Manual (POMS), the qualifying quarters of a spouse cannot be credited if the marriage has ended, unless by death, before a determination of alien eligibility is made for aliens lawfully admitted for permanent residence. However, the POMS also states that qualifying quarters credited from a spouse are not lost if the marriage ends for any reason after a determination of eligibility is made unless the benefits terminate and a new claim is required.

Unlike food stamp benefits which expire if there is no determination of eligibility for the new certification period, SSI benefits are provided on a continual basis with the Social Security Administration performing redeterminations on a schedule that is based on the likelihood that a recipient's situation may change. This difference has led the two agencies to apply different methodologies for crediting qualifying quarters worked by a spouse.

In 2000, the Department received a similar comment to the proposed Noncitizen Eligibility and Certification Provisions (NECP) Rule. The analysis of this comment can be found in the final rule at 65 FR 70134 on November 21, 2000. At that time, the Department rejected the proposal to conform their policies to mirror those of the SSI program. However, the Department did amend the regulation to allow the State agency to continue eligibility until the household's next recertification once they determine eligibility based on quarters of coverage of the spouse.

The commenter asked for the Department to revisit this issue based on a belief that the Department unnecessarily relied on the technicality that food stamps are provided on a time-limited certification period. The commenter felt that this reliance on a technicality in 2000 was unnecessary because the statute only requires that the couple "remain married" at the time the quarters are credited, not that they continue to be married at the time of recertification.

Although Congress intended to simplify program administration under the FSRIA, this was not an issue that they addressed. The FSRIA lists specific programs that the Department needs to work with to develop uniform policies. Congress did not include SSI in this list of specific programs. Additionally, the current regulations are consistent with the administration of the Food Stamp Program. As stated above, the certification period of the Food Stamp Program does not mirror that of the SSI program. Therefore, the Department developed a regulation that came as close to the SSI program policy as it could without violating the overall principles of the Food Stamp Program. All federal benefit programs are different in their administration of benefits because Congress implemented laws that fit the overall goals of each program. Therefore, the agencies governing these programs need to comply with Congressional intent and develop rules to achieve the specific goals of each program.

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. 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.

The Department did receive comments regarding the deeming rules which will be discussed in detail below.

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. Second, Section 4401 extends eligibility to all qualified aliens who are under the age of 18. The Department proposed to amend current regulations at 7 CFR 273.4(a)(5)(ii) to incorporate the revised eligibility requirements for certain qualified aliens.

Under the Act, individuals are considered disabled if they receive certain federal or State disability benefits. Most of the benefits listed in the Act require an individual to provide proof of a disability. The Act also provides that persons receiving disability-related Medicaid, State-funded medical assistance benefits, and State General Assistance (GA) benefits may be considered disabled for food stamp purposes if they are determined disabled using criteria as stringent as federal SSI criteria. One commenter noted that some States will provide disability-related general or medical assistance to residents based on age. They were concerned that although some of these individuals also meet the SSI definition of disabled, they may be denied food stamps because they did not have to provide proof of their disability to receive their State-funded assistance. To ensure that this does not happen, the commenter suggested that the final rule clarify that an individual may qualify as disabled for food stamp purposes if the individual has been determined by the State to have a disability that meets SSI standards, as long as the individual is receiving a State-funded, needs-based, benefit. Although these points are addressed in the preamble to the proposed rule and in program policies, the commenter wanted to have these policies codified to avoid the anomaly of denying food stamps to disabled elders while allowing food stamps to non-elderly disabled persons.

The Department has considered these comments and has determined that the issue presented by the commenter is so limited that it is not necessary to codify. Additionally, the Act requires the individual to receive these benefits based on their disability. The fact that the State agency has elected to provide benefits to individuals based on their age and not their disability is not something that the Department can control. The Department must comply with the Act and maintain the provision that the individual receive benefits based on disability criteria. There is nothing in the Act that requires State agencies to accommodate disabled individuals and make a disability determination to qualify under this provision. Therefore, the Department cannot amend this provision of the proposed rule and finalizes it as proposed.

One commenter discovered what they believed to be conflicting language in the proposed rule. They noted that the preamble states that Section 4401 extends eligibility to qualified aliens who meet the definition of disabled and further discussion states that they need to be qualified aliens legally residing in the United States.

The language in the preamble to the proposed rule that refers to the term "lawfully residing" is in a discussion about the current regulations. The proposed rule clearly states that the requirement that an individual be "lawfully residing" as of a certain date would be amended. The proposed language for 7 CFR 273.4(a)(5)(ii)(H) and 7 CFR 273.4(a)(5)(ii)(J) would have amended the current language for those sections 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". Therefore, there is no conflict for the Department to correct in the final rule. Under the final rule, to be eligible under 7 CFR 273.4(a)(6)(ii)(H), a qualified alien must be receiving benefits or assistance for blindness or disability. Under revised 7 CFR 273.4(a)(6)(ii)(J), a qualified alien must be under 18.

As a result of the change in program rules qualifying individuals under the age of 18, the Department received several comments on the issue of sponsor liability regarding this group of newly qualified immigrants. Under the current rules, sponsors who sign a binding affidavit of support are responsible for food stamp benefits received by the immigrants they sponsor if those benefits were received during the period of time the affidavit of support is in effect. The affidavit of support remains in effect until the sponsored immigrant becomes a naturalized citizen, can be credited with 40 qualifying quarters of work, is no longer a lawful permanent resident and leaves the U.S. permanently, or until the sponsor or the sponsored immigrant dies.

The NCEP Rule clarified that a State agency cannot request reimbursement from the sponsor during any period of time that the sponsor receives food stamps. The Department decided not to regulate the issue of sponsor liability any further until the Department has completed a thorough policy development process in coordination with other Federal agencies. Several commenters suggested that the Department amend the regulations to clarify that sponsors are not required to reimburse agencies for benefits provided to immigrant children. They believed that this would ensure that immigrant children have access to food stamps, as intended by the recent legislation.

Sponsors are normally shielded from liability in the first 5 years of residence because, under prior law, sponsored aliens were not eligible (with limited exceptions) for 5 years. In amending the Act to make legal immigrant children immediately eligible for benefits, Congress made sponsors of these children potentially immediately liable for benefits issued to them. The commenters believed that this was the result of a Congressional oversight. Therefore, they suggested that the Department consider the option of excluding benefits received by sponsored alien children from sponsor liability for the first 5 years that they are in residence.

The Department has considered these comments and will maintain the current rule as proposed. This was not an issue that Congress felt was necessary to raise in the statutory language and the Department does not want to regulate the issue of sponsor liability any further until the Department has completed a thorough policy development process in coordination with other Federal agencies. Since Congress did not raise this issue in the statutory language, the Department is following the statutory language and does not believe that it is necessary or proper to regulate beyond these statutory provisions.

Several commenters suggested that the Department amend the current regulations to clarify that human trafficking victims and certain family members are eligible for food stamps to ensure that victims and their families are not denied benefits. This was not addressed in the proposed rule. The Department included this issue among several it addressed in the "Eligibility Determination Guidance: Noncitizen Requirements for the Food Stamp Program" issued in January 2003 (and in further guidance issued in August 2004).

The guidance reflects the requirements under the "Trafficking Victims Protection Act of 2000" (Pub. L. 106–386), as reauthorized by the

Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108–193) that adult victims of trafficking who are certified by the U.S. Department of Health and Human Services (DHHS) are eligible for food stamp benefits to the same extent as refugees. Additionally, children who are under 18 years of age and have been subject to trafficking are also eligible on the same basis as refugees, but they do not need to be certified. The Department is making a technical amendment to reflect the eligibility status of victims of trafficking as required by statute, by adding these provisions to the final regulations. Therefore, the final rule includes a new 7 CFR 273.4(a)(5). This new paragraph will clarify that trafficking victims and certain family members are eligible for food stamp benefits.

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. As stated in the proposed rule, the requirements of the two laws are not fully consistent. However, the Department addressed and resolved the inconsistencies in the NCEP Rule.

Current deeming requirements appear in food stamp regulations at 7 CFR 273.4(c). A complete discussion of the current deeming rules is provided in the proposed rule. 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 proposed 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.

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. However, because sponsored aliens under the age of 18 will now be exempt from deeming requirements, following current rules, the State agency must deem only a portion of the sponsor's income to the household. Even though the sponsored child is exempt from deeming requirements, the sponsor is still sponsoring that child. Thus, if an individual 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 proposed to amend current regulations at 7 CFR 273.4(c)(2)(v) to clarify this point.

While most commenters supported this provision, several had issues with what they regarded inequitable treatment of households with U.S. citizen children versus those with immigrant children. In a case involving a sponsored immigrant adult and citizen child, the eligibility worker would deem all of the sponsor's income to the household. In a household with sponsored immigrant parents and immigrant children, the eligibility worker would deem only that portion of the sponsor's income attributable to the adult and disregard the portion attributed to the immigrant child. According to the commenters, this could result in the reduction or even the elimination of food stamp benefits for the citizen child with sponsored immigrant parents because all of the sponsor's countable income is added when determining a household's eligibility for the Food Stamp Program. Commenters noted that according to the Urban Institute, 85 percent of immigrant-headed households include at least one U.S. citizen, typically a child. They felt that Congress could not have intended to provide less assistance to households with U.S. citizen children.

The commenters asked the Department to place all sponsored households on equal footing by applying deemed income to households with citizen children in the same manner as it is applied to households with immigrant children. The deemed income would be divided equally among any sponsored immigrants and children in the household with the child's amount excluded. They felt that this would prevent the inequitable distribution of benefits among sponsored households and decrease program complexity.

One commenter suggested that the household be divided into different units. In a household with a sponsored parent and two children (either immigrant or citizen children), for example, the two children would be considered separately with only their parent's income counted in determining their eligibility. Then the sponsored parent's eligibility would be determined separately, with the sponsor's income considered. This same commenter suggested an alternative approach which would allow the sponsored immigrant to "opt out" of the household and be treated under the State's formula for "PRWORA ineligible" immigrants.

The Department believes it was not the intent of Congress to create an inequity between citizen children and sponsored alien children that is fundamentally at odds with the overall goal of the program. Therefore, the final rule places all households on equal footing providing the same income deeming procedures to households with citizen children as those applied to households with immigrant children.

3. Attorney General Notification of Indigency

Current rules require that the State agency notify the Attorney General any time a sponsored alien has been determined indigent, and include in the notification the names of the sponsor and sponsored aliens. Moreover, 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 or State agency (or an agency of a political subdivision of a State) must request reimbursement by the sponsor in the amount of such assistance. Commenters 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 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 agreed with this concern over the mandatory notification requirement as a deterrent to participation and so proposed to amend current regulations at 7 CFR 273.4(c)(3)(iv) to allow a household to opt out of the indigence determination and be subject to regular sponsor deeming rules at 7 CFR 273.4(c)(2). Under the sponsor deeming rules, failure to verify the sponsor's income and assets would result in the disqualification of the sponsored alien.

The Department received one comment from a State agency that saw little benefit in this provision. The commenter stated that most sponsored alien applicants who are determined to be indigent have either little or no contact with their sponsor, or are receiving no monetary assistance from their sponsor. Therefore, it makes little sense for the alien applicant to try to request information from the sponsor for purposes of regular sponsor deeming. Additionally, the commenter noted that allowing the applicants to opt out will not necessarily increase participation because the aliens typically opt out completely or become ineligible if the sponsor's income is deemed to them. However, the Department believes that opting out may increase participation by other household members, particularly children. Accordingly, the Department will adopt the revisions as proposed.

The Department also received a comment asking that the final rule contain a provision that will ensure that the sponsored alien is provided notice of the consequences of refusing an indigence determination. Namely, that 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. The final rule contains language to ensure that participants are notified of these consequences.

Prior to the publication of the proposed rule, the Department was asked to permit State agencies to develop an administrative process which requires an eligible sponsored alien to provide consent before release of information to the Attorney General or the sponsor. Commenters suggested that many sponsored aliens would learn of the Attorney General notification and sponsor liability requirements only after they have disclosed their immigration status and social security number. Fearing adverse consequences as a result of the notification requirements, the sponsored alien may withdraw the entire application, resulting in other household members, in many cases U.S. citizen children, losing the opportunity to receive benefits. The Department stated in the proposed rule that it is within the discretion of the State agency 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 aware of the consequences of failure to grant consent or failure to provide any other information necessary for the purposes of deeming the sponsor's income to the alien. As stated previously, the consequence of failure to verify the sponsor's income and assets is the disqualification of the sponsored alien. The Department sees the new option as an administrative simplification, rather than a basic change in policy. The new provision allows the sponsored alien to opt out at the beginning of the application process. This results in an outcome that would have ensued under the existing regulations, but with much more time consuming administrative process. The Department received comments in favor of this provision. Therefore, we are incorporating this provision in this final rule.

4. Comments Related to Department Guidance on Immigration

In addition to the comments that addressed provisions of the proposed rule that are discussed above, the Department received comments that address additional immigration issues. Most of these comments reflect primarily on the guidance issued by the Department in January 2003. Since these issues were not addressed in the proposed rule, the comments are beyond the scope of this rulemaking and should be addressed in a future rulemaking in order to have the force and effect of law.

Simplified Definition of Resources—7 CFR 273.8

For the purposes of this final rule, the Department is defining cash assistance under a program funded under part A of title IV of the SSA as "assistance" as defined in the TANF regulations at 45 CFR 260.31(a)(1) and (a)(2), except for programs grand-fathered under Section 404(a)(2) of the SSA. Under TANF, assistance includes cash and other forms of benefits designed to meet a family's ongoing basic needs including benefits conditioned on participation in work experience or community service. Programs grand-fathered under Section 404(a)(2) of the SSA 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.

In the final rule, the Department is defining medical assistance under Section 1931 of the SSA as Medicaid for low-income families with children. This section, which was added by PRWORA, allows low-income families with children to qualify for Medicaid. It requires that States use the income and resource standards that were in effect in July 1996 for the Aid to Families with Dependent Children (AFDC) program, but also provides options for States to use less restrictive income and resources tests for these families.

This final rule adds a new paragraph at 7 CFR 273.8(e)(19) which provides 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, the final rule prohibits State agencies from adopting resource exclusions, for food stamp purposes, of TANF cash assistance and Medicaid programs that do not evaluate the financial circumstances of adults in the household while determining eligibility and benefits.

The requirement at 7 CFR 273.8(c)(3) to deem the resources of sponsors of aliens as resources of the alien applicants continues to be in effect. However, if a State agency has chosen in accordance with the provisions of 7 CFR 273.8(e)(19) in this final rule 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.

The final rule amends 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 an elderly or disabled member is reflected at 7 CFR 271.2).

A State agency that selects the option to use its TANF cash assistance or Medicaid resource rules in lieu of food stamp resource rules may not exclude the following:

1. Licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Act (7 U.S.C. 2014(g)(2)(C) and (D)). (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 proposed rule would have required that the term "readily available" apply 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. While commenters found the proposed definition of "readily available" to be easy to understand and specific, they also found that it added complexity to program administration. Some suggested that making the term "readily available" apply to all financial instruments would be simpler than the proposed definition, which would be more restrictive than current policy. Others argued that we should allow State agencies to exclude stocks, bonds, and savings certificates if their TANF cash assistance or Section 1931 Medical assistance programs exclude them. We disagree. These financial instruments are generally easily converted to cash. In the rare instances where they are not easily cashed, current regulations would exclude them as inaccessible resources. As examples, a stock certificate without value, one whose value is not easily determined, or an inherited stock that has not yet cleared probate is considered inaccessible under current rules and would not be counted against a household's resource limit. For these reasons the final rule defines "readily available resources" as resources the owner can simply withdraw from a financial institution. For example, one can withdraw funds from a money market account, or convert foreign currency stored in a safety deposit box to U.S. dollars, by simply going to the financial institution and going through the required procedures.

Under the proposed rule, State agencies would have been able to 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. This provision drew over 100 comments reminding FNS that the intent of the legislation is to simplify food stamp resource rules and to conform them to other Federal assistance programs. Commenters argued that IDAs are intended to help break the poverty cycle and to encourage work. We agree. The final rule allows States to exclude any and all IDAs from resources, provided their TANF cash assistance or Section 1931 medical assistance programs exclude them.

The proposed rule would have offered States the option to exclude deposits in individual retirement accountants (IRAs) the terms of which enforce a penalty, other than forfeiture of interest, for early withdrawal. The intent of this language was to limit the exclusion to situations where converting the IRA to cash would entail significant loss of resources. Title IV of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246)(FCEA) provided for the exclusion of all IRAs. Accordingly, any discussion of IRAs is dropped from this rule and will be discussed in a future rulemaking.

Simplified Definition of Income—7 CFR 273.9(c)

Current regulations at 7 CFR 273.9(c) specify the 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. Provisions at 7 CFR 273.9(c)(1) through (c)(16) provide a long list of income exclusions that State and local agencies must apply when calculating a household's income.

Section 4102 of FSRIA amends Section 5(d) of the Act (7 U.S.C. 2014(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 SSA; and
3. Any type 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), X (Grants to States for Aid to the Blind), 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 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.

Current regulations at 7 CFR 273.9(c)(3) provide an exclusion for educational assistance including grants, scholarships, fellowships, work-study, educational loans which defer payment, veterans' educational benefits and the like. These exclusions (based on an exclusion provided at Section 5(d) of the Act) are limited to educational assistance provided to a household member who is enrolled at a recognized institution of post-secondary education and that are used or earmarked for tuition or other allowable expenses. State agencies have the option of excluding this assistance from income for food stamp purposes to the extent that their 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).

To implement section 4102 of FSRIA, the Department proposed to amend 7 CFR 273.9(c)(3) by adding a new 7 CFR 273.9(c)(3)(v) which grants State agencies the option to 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 implement this option 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.

One commenter recommended the Department take the opportunity in this final rule to clarify the interaction of the federal Higher Education Act (Pub. L. 99–498) with the Food Stamp Program. The Higher Education Act, as amended, provides that certain types of student financial assistance shall not be taken into account in determining the need, eligibility or benefit level of any person for benefits or assistance under any Federal, State or local program financed in whole or in part with Federal funds (20 U.S.C. 1087uu). Food stamp regulations at 7 CFR 273.9(c)(3) differ from 20 U.S.C. 1087uu by counting student aid as income when such aid is used for normal living expenses, as opposed to tuition and books. The commenter recommended that the Department amend food stamp regulations to conform to 20 U.S.C. 1087uu.

The Department reviewed the applicable language in the Higher Education Act and confirmed that current regulations at 7 CFR 273.9(c)(3) are inconsistent with this law. The Food

Stamp Program is a federally funded program, thereby meeting the criteria of 20 U.S.C. 1087uu. Therefore, in addition to adopting 7 CFR 273.9(c)(3)(v) as proposed, the Department is adding a new 7 CFR 273.9(c)(3)(ii)(A) to exclude student financial assistance received under 20 U.S.C. 1087uu of the Higher Education Act. The Department notes that this section of the Higher Education Act funds work study programs. Therefore, any income received by an individual participating in a work study program funded under this section of the Higher Education Act shall not be counted when determining the individual's eligibility for food stamps. The final rule amends 7 CFR 273.9(b)(1)(vi) to conform to this mandate.

The Department proposed a new 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 SSA. Complementary assistance relates to certain types of assistance provided under the old AFDC program. In the proposed rule, we specifically asked State agencies to include, in their comments, examples of the types of payments that fall under the category of State complementary assistance program payments. We received only one example of such a program, the Supplemental Living Program in New Jersey. Due to the low response rate, the final rule does not include specific examples of these payments. This rule adopts as final the proposed 7 CFR 273.9(c)(18).

To incorporate the changes mandated by section 4102 of FSRIA, the Department proposed to add a new 7 CFR 273.9(c)(19), that would allow the State agency at its option to exclude from Food Stamp Program income the 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 of the SSA. However, this provision would not include programs that do not evaluate the financial circumstances of adults in the household and programs grand-fathered under Section 404(a)(2) of the SSA. Additionally, a State would not be able to 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.

The Department received several comments regarding proposed 7 CFR 273.9(c)(19). Most of these comments focused on the specific incomes or payments listed in the paragraph. We will address comments concerning specific incomes and payments in the order they appear in proposed 7 CFR 273.9(c)(19). Before we begin this detailed discussion, we wish to address two miscellaneous items. First, the Department is changing the format of the language in the proposed rule. The final rule lists each income or payment that section 4102 of FSRIA does not exclude as income in a list format, starting with 7 CFR 273.9(c)(19)(i) and ending with (c)(19)(x). We believe this revised format will make it easier for readers to understand what income or payments cannot be excluded.

Second, the Department received a comment regarding child support arrearages and whether such sums should be included or excluded as income. The commenter pointed out that, in some cases, a large arrearage of child support may accrue while the non-custodial parent is unemployed or working off the books to evade a wage attachment. State Child Support Enforcement offices ("State IV–D agencies") sometimes are able to attach a bank account, tax refund, lottery winnings or other property of the non-custodial parent and may remit several months of support at once to the custodial parent. These non-recurring lump sums of child support must be excluded from the custodial parent's household income in accordance with 7 CFR 273.9(c)(8). However, the commenter thought that this may confuse some eligibility workers accustomed to querying their State IV–D agencies for information on child support received. The commenter asked the Department to include lump sums of child support arrearages to the examples of lump sums in 7 CFR 273.9(c)(8).

The Department disagrees with the comment. Current 7 CFR 273.9(c)(8) contains some, but not all, examples of non-recurring lump sum payments. The paragraph clearly indicates that the examples included in the text are not exclusive. The Department sees no need to add more specific examples of non-recurring lump sum payments to this paragraph.

1. Income Excluded by State Agencies When Determining TANF or Medical Assistance

The Department proposed to amend the current regulations at 7 CFR 273.9(c) to permit exclusion of new types of income at State agency option. In addition to permitting the exclusion, one commenter expressed the desire to see this regulation apply to the "treatment" of income as well. If the TANF or medical assistance program treats a certain income as earned income, the commenter would have the State agency also apply the same treatment for food stamps. For example, the regulations governing the TANF program treat workers' compensation as earned income if it is employer funded and if the recipient is still considered an employee of the company. However, current food stamp policy requires worker's compensation be counted as unearned income.

The definition of earned and unearned income, as well as how much of a particular type of income to count is set by regulation, not statute (although Section 5(d) of the Food Stamp Act does say household income includes all income from whatever source except that which is specifically excluded). Thus, even though FSRIA speaks only to types of income to count or exclude for food stamp purposes, the Department agrees with the commenter that having consistency among TANF, medical assistance, and food stamps in how they "treat" income would simplify budgeting for State or local staff who administer multiple programs and would be another step toward simplifying the Program. Therefore, the Department is amending 7 CFR 273.9 to expand the list of allowable earned income to include certain income as earned income if the household is receiving TANF and/or State medical assistance and this income is treated as earned income by a State's TANF or medical assistance program.

Even though a State may exclude income in its TANF or medical assistance program, section 4102 mandated that certain types of income cannot be excluded. Many commenters said these specific income exclusions disregarded the clearly expressed Congressional intent that the Department only supplements the list in the case of unforeseen gamesmanship by some States. Others claimed the additional mandatory income exclusions would increase the administrative burdens on caseworkers and paperwork burdens on households. For example, State agencies would be required to ask about these types of incomes on the application forms and certification interviews even if a State does not find them worth counting for TANF and Medicaid. Moreover, commenters noted that each type of income affects very few households and the Department does not collect data on them through its quality control database. Commenters stated that by supplementing the Congressional list of exclusions, the language in the proposed rule largely eliminates the simplifying purpose of the provision.

The Department gave serious consideration to these comments. While Congress supported simplifying program administration, it did give the Department the authority to add types of income to the list of mandatory inclusions viewed essential to the equitable determination of eligibility and benefit levels. The Department has determined that the additional types of income included in the proposed rule can be significant sources of income to households and should be counted in determining food stamp eligibility and benefits.

2. Exemption of Gross Income From a Self-employment Enterprise

Three commenters argued that States are unlikely to want to bear the expenses of a blanket disregard of self-employment income in their TANF and medical assistance programs. They believe the Department should leave it to the States to determine which particular types of self-employment income are rare and erratic forms of income and not worth the trouble to ask about through application questions and/or verification requirements. Commenters also stated that if the Department is determined to regulate in the area of self-employment income, it should only require the counting of self-employment income that is the household's primary source of support. The amount of income received from some self-employment sources, such as garage sales and sale of blood plasma, is sometimes minimal and is not a regular source of net income to the household.

The Department does not see a need to clarify this point in the final rule. In determining a household's income for the certification period, State agencies are instructed by current regulations at 7 CFR 273.10(c)(1) to consider income already received by the household during the certification period and anticipate income that the household and State agency are reasonably certain will be received during the certification period. Thus, the Department contends that State agencies should only count self-employment income that at certification can be anticipated with reasonable certainty. Income from rare or erratic sources, like garage sales and the sale of blood plasma, does not meet the standard of reasonable anticipation.

Another commenter stated that there is no need for a single uniform definition of self-employment income for food stamp purposes. Most States count self-employment income in their TANF programs but take a range of approaches in their TANF definitions. The commenter felt that there are very legitimate reasons why a State may wish to develop or test an alternative approach. The commenter stated that imposing the uniform definition has the effect of forcing States to either adopt that definition for TANF purposes or have inconsistent TANF and food stamp definitions. This could greatly increase the complexity of eligibility and benefit determinations for self-employed households. This commenter suggested that the final rule specify that while States must count self-employment income, a State may elect to use the methodology it uses in its TANF or medical assistance program for counting such income.

The Department disagrees with this comment. The methodology a State uses to count self-employment income in its TANF or medical assistance program may not conform to the rules and regulations of the Food Stamp Program. Moreover, these methodologies, if applied to the Food Stamp Program, could allow a greater number of individuals to qualify for benefits than would be the case if States had used a specific food stamp methodology. Self-employed individuals must be found eligible for food stamp benefits through the use of a food stamp methodology. State agencies that believe there is an administrative and cost advantage for applying TANF or medical assistance program methodologies for counting self-employed income to the Food Stamp Program may present their case to FNS through the certification waiver process.

A commenter asked if it was the Department's intent to say that no self-employment income can be excluded under this provision. Currently, 7 CFR 273.9(b)(1) indicates that gross self-employment income is counted and 7 CFR 273.11(a)(2) allows for excluding some self-employed income due to allowable costs. The commenter stated that the Department's proposal implies that gross self-employment income is countable without regard for allowable costs. The commenter noted that if this is the Department's intent, it is a major change and will exclude many from receiving food stamps. They also noted that the Department did not propose to revise the regulations at 7 CFR 273.11(a)(2) and this regulation continues to provide that the costs for making the self-employment income are excluded.

In developing the language for the proposed rule, the Department intended that States would count self-employment income just as they do currently, with the exclusions permitted under 7 CFR 273.11(a)(2). The Department appreciates the commenter pointing out this contradiction between 7 CFR 273.9(b)(1) and 7 CFR 273.11(a)(2). To address this conflict, the final rule includes a reference in 7 CFR 273.9(c)(19) to 7 CFR 273.11(a)(2) and requires States to calculate self-employment income in accordance with this part.

3. Foster Care and Adoption Payments

A commenter presented reasons why the Department should exempt adoption assistance for special needs children. Adoption assistance for special needs children are negotiated payments made to families who adopt a child with special needs. Such payments are meant to reimburse the adoptive parents for the additional costs incurred due to the child's needs, such as modifying a home, respite care, and medical and counseling needs.

The commenter discussed a situation where a foster care family is receiving food stamps for its household, which includes a foster child with special needs. If the family decides to adopt the special needs child, once they adopt him/her, the child will become part of their household and the family will be eligible for the federal title IV adoption assistance program. The commenter noted that under the proposed rule, the adoption assistance payments will count, which may result in the household facing a reduction or, more likely, termination of their food stamp benefits. The commenter urged the Department to examine the issue and facilitate a change that will serve as an incentive for foster care families to adopt special needs children and proposed a remedy. The commenter suggested the Department exempt part of the adoption assistance that reimburses the family for special needs of the child.

In the preamble for the proposed rule, the Department answered a specific question regarding whether adoption or foster care payments made to a household must be counted as income if they are excluded for TANF or Medicaid purposes. The Department said that section 4102 of FSRIA specifically requires that the State include benefits paid under title IV of the SSA as income for food stamp purposes. Title IV–E of the SSA authorizes federal payments for foster care and adoption assistance. 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. The Department has no discretion to exempt adoption subsidies for families received under a title IV–E program.

Therefore, the Department cannot exempt part of these subsidies as requested by the commenter.

Another commenter stated that the proposed rule is unnecessarily restrictive by limiting States' discretion. For example, by specifying that foster care and adoption payments must be counted as income, the proposed rule did not accommodate the broad range of different purposes and funding streams for these payments. As noted by the commenter, portions or all of these payments may be funded by State or local programs, and not just under title IV–E, and may be based on a child's special needs beyond normal living expenses. Thus, the commenter believed that it should be within a State's discretion to exclude foster care or adoption subsidies paid by State or local programs as income for the purposes of determining food stamp eligibility and benefit amounts.

The final rule does not give States discretion to exclude foster care or adoption subsidies paid by a State or local agency. The Congressional intent in the 2002 FSRIA was to ensure that payments from a government source, such as foster care or adoption subsidies from a State or local agency, would not be excluded. Although it may be possible that funding for adoption or foster care payments may come from several funding sources, the legislation specifically refers to payments from a government source. This would include payments from a State or local government. Neither Title IV–E of the SSA nor the Act addresses adoption or foster care payments from a non-governmental source. Therefore, States have discretion in determining the exclusion of such payments. The final rule at 7 CFR 273.9(c)(19) does not grant State agencies the option to exempt any portion of adoption and foster care payments that are paid through federal, State or local government funds.

4. Regular Payments From a Government Source

Section 4102 of FSRIA does not exclude regular payments from a government source. To fulfill this mandate, the Department proposed to add a new 7 CFR 273.9(c)(19). The proposed rule would require counting direct payments from a government source as income to a household. In addition, the proposed rule would also require counting of indirect payments or allowances from a government source that are paid to a household through an intermediary. For example, as stated in the proposed rule, 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. This rule would apply even if such payments would be excluded under the State TANF or medical assistance program. This requirement would not apply to payments which are excluded from income for the purposes of determining food stamp eligibility under another provision of law.

Several commenters objected to this section of the proposed rule. The commenters contend that requiring States to count governmental payments, even if the household receives these funds from a non-government source, can be extremely complex and goes against the idea of program simplification. For example, fuel funds and similar utility assistance programs may be available to assist low-income households to buy low-cost heating and cooking fuel or to pay utility bills. The commenters noted that these programs may be funded by a combination of money from State and local governments, utility companies, and voluntary contributions from individual ratepayers.

The Department gave careful consideration to these comments. State agencies, the entities directly responsible for implementing food stamp rules, did not comment on this subject. The silence of State agencies leads us to believe that this may not be as serious a problem for State agencies as the commenters believe. Nevertheless, to ensure the regulation is understood, the final rule clarifies in 7 CFR 273.9(c)(19) that States should count money paid through a private intermediary when it is clear that all the funding money comes from a government source.

In the preamble to the proposed rule, the Department provided another example of a regular payment from a government source—Volunteers in Service to America (VISTA) payments made under Title I of the Domestic Volunteer Service Act of 1973. (42 U.S.C. 4950, *et. seq.*) A commenter stated that States should be able to decide whether or not they want to exclude VISTA payments for VISTA volunteers who apply for food stamps after joining VISTA. The commenter noted that the proposed policy is inequitable because VISTA volunteers who are already receiving food stamps have these payments excluded but volunteers who apply for benefits after they become part of VISTA must have their subsidy counted as income. The commenter believed that this policy is inconsistent with the goals of State flexibility and program simplification.

Current regulations at 7 CFR 273.9(c)(10)(iii) require that VISTA payments be counted as income only if the households applies for benefits after joining the VISTA program. There is nothing in the FSRIA that indicates current food stamp policy should be changed to exempt VISTA subsidies from income for these applicants. Therefore, the Department adopts in the final rule the portion of proposed 7 CFR 273.9(c)(19) pertaining to regular payments from a government source.

5. Child Support Payments Made by a Non-Household Member

Section 4102 explicitly requires that legally obligated child support payments made to 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. Therefore, the Department proposed that all child support payments made to a household be counted as income for food stamp purposes.

We received several comments about voluntary child support payments. A couple of commenters agreed that voluntary child support should not be treated differently from court-ordered child support. However, they stated that the Department should explicitly reassure States that they should not count voluntary child support payments received by a household as income unless they are reasonably certain a voluntary child support payment will be received in a month. The commenters believed that no quality control error or claim should result when an irregular voluntary child support payment is received that the State did not budget when determining the household's income. Moreover, they stated that States need some guidance on the treatment of these payments but the Department failed to provide such guidance in the proposed rule. The Department disagrees with these comments. We discussed the issue of legally obligated or voluntary child support payments in the preamble to the proposed rule. The Department explained that voluntary child support payments should not be treated more favorably than legally obligated payments. Moreover, the Department noted that there may be circumstances in which voluntary child support payments to a household are paid infrequently or irregularly. The Department reminded State 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 per quarter. State agencies are expected to apply appropriate food stamp policy and use their judgment in cases where a household receives voluntary child support payment. Therefore, the Department is adopting this provision in our final rule.

6. Monies Withdrawn or Dividends Received by a Household From Trust Funds

The Department proposed that State agencies 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 a household.

A commenter expressed the view that trust fund disbursements are typically made for specific purposes, such as medical or educational expenses. The commenter noted that if such disbursements are made for normal living expenses, they are not excludable under 7 CFR 273.8(e)(8). In most cases, the household should be able to show that trust fund money is not accessible, is a non-recurring lump sum payment, or is an excluded reimbursement. The commenter stated that the final rule should allow any State to exclude these funds for food stamps, if it is willing to do so for TANF and medical assistance eligibility. This would avoid the burdensome and confusing process that the proposed rule imposes on States.

The Department disagrees. As we stated in the proposed rule, trust fund disbursements may be of a significant amount and may be made on a regular basis to a household. While the trust account itself may not be accessible to a household, the household may still receive a trust fund disbursement that is accessible and available to them. The household must report this information. It is prudent for State agencies to ask about trust income at certification and recertification, and note the household's answer. Even if the household receives irregular trust disbursements, they must be reminded of their obligation to report any trust disbursements in conformance with the household's reporting requirement. This portion of proposed 7 CFR 273.9(c)(19) is adopted in the final rule.

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

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

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 non-household member, including vendor payments made on behalf of the non-household member. Section 4101 of FSRIA amended 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 non-household member to the list of income exclusions. It also amended 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, the Department proposed to amend 7 CFR 273.9 to add a new paragraph (c)(17) which would provide that legally obligated child support payments be excluded from household income. The proposed paragraph (c)(17) would give State agencies the option to treat child support payments as an income deduction rather than an income exclusion, and included a reference to 7 CFR 273.9(d)(5) which contains existing requirements for the child support deduction. In the proposed rule, 7 CFR 273.9(d)(5) would be amended to reference a new 7 CFR 273.9(c)(17), and would 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. Commenters generally supported this new option while noting that it may benefit only a small number of households. However, commenters had several concerns regarding the implementation of this option and its effect on other eligibility calculations which will be discussed in further detail below. The proposed rule would further amend 7 CFR 273.9(d)(5) to require State agencies that choose to provide a deduction rather than an exclusion to include a statement to that effect in their State plan of operation. The Department did not receive any comments regarding this requirement so we are adopting it as proposed.

Under the proposed rule, child support payments that qualify under the existing regulations for the income deduction would 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 non-household member, including payments made to a third party on behalf of the non-household member (vendor payments). No deduction is allowed for any amount that 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.

The preamble for the proposed rule also stated that if State agencies provide a household an exclusion for legally obligated child support payments rather than a deduction, households may reap the benefit of both. The proposed 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 be eligible for benefits. In addition, the excluded payments would not be counted as part of the household's net income, in effect deducting the payments from income. A detailed discussion of this provision follows.

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 must be determined before computation of the excess shelter deduction. The Department proposed to make 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. The Department did not receive any specific comments about this provision so adopts it as proposed.

Prior to the publication of the proposed rule, several State agencies 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 the current rules, if the State agency provides the household an income exclusion for child support payments, the 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 proposed to address this problem by amending current rules at 7 CFR 273.9(d)(2) and 7 CFR 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 asked interested parties for suggestions on other methods for ensuring that households receive the full earned income deduction when they receive an exclusion for child support payments.

While the Department received comments supporting the proposed amendment, several commenters expressed concern with the time consuming calculations involved. Some thought it was going to be difficult to train workers and administer a system where the State agency needs to exclude payments from gross income to come up with an adjusted gross income and then add it back in to determine the earned income deduction. They felt this two tier approach was complex and error prone. Some also addressed concern regarding time and cost factors associated with system implementation.

One commenter proposed an example of a household with a monthly gross income of $1,000 who has $400 in child support payments excluded. The commenter asked if the rule intends to take 20 percent of the total gross income prior to the exclusion ($1,000) or 20 percent of the countable gross income ($600) in calculating the earned income deduction. The answer to this question is that when a State agency utilizes the child support exclusion, the State agency shall take 20 percent of the total gross income ($1,000) prior to the exclusion to calculate the earned income deduction.

According to the State Options Report, published by FNS in June 2009, thirteen (13) States are complying with the rule and have effectively added legally obligated child support to their list of exclusions. The remaining States have opted to treat child support payments as an income deduction rather than an exclusion. Most of the State agencies that apply child support as an exclusion have programmed their computer system to handle this calculation. The caseworker simply types in the data for the amount of child support paid by the applicant and the system performs the computation for the caseworker. Most State agencies have not had to provide any extensive training to eligibility workers about this calculation because it is performed by their computer system. Although State agencies and other commenters have expressed concern over the complexity of this formula, the Department adopts the amendment as proposed. Most State agencies are computerized so they can program their systems to handle the calculation.

One commenter noted that the purpose of choosing the exclusion over the deduction is to help a family become eligible for food stamps by reducing their countable income. They felt that it was inequitable to allow an earned income deduction on one type of excluded income but not on other types. The Department has considered this comment but adopts the change as proposed because it is consistent with Congress's intent in the implementation of this option in the FSRIA.

3. State Option To Simplify the 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 proposed 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 proposed option would only be available in the cases of households that pay their child support through their State CSE agency.

The Department received a number of comments expressing concern with this proposed amendment. Most of the comments involved the reliance by State agencies on information received from the State CSE agency and the method for obtaining this information. Some commenters did not completely understand the fact that the provision only applied to households who pay their child support through their State CSE agency. They were concerned that the Department's use of the word "solely" would disadvantage individuals with legal obligations who make payments outside of the CSE system. However, the Department notes that the rule clearly states that this provision only applies to those households who make payments through the State CSE agency.

Other commenters noted that the use of the word "solely" could be limiting for individuals who make payments through the State CSE agency but who either contest the information provided by the CSE agency or need time to accommodate for the lapse between the date of the order and the time it is recorded into the State CSE system. Commenters requested that the final rule allow for a corroboration of sources. One commenter also asked for clarification regarding procedures for an obligor who has multiple child support cases and for child support cases that cross State boundaries.

The Department has considered these comments and the final rule modifies the proposed language so that State agencies will not rely on this information as their sole source of verification. The final rule gives State agencies the opportunity to rely on this information but it will not have to be the sole source of verification for households who participate in the State CSE system. Additionally, the final rule contains language that will provide households with the opportunity to challenge information provided by the State CSE agency.

If an obligor has multiple child support cases, the payments from these cases should be combined to determine the total obligation of the household. The removal of the requirement for State agencies to rely solely on information received from the State CSE agency should eliminate any complication that could arise from cases that cross State boundaries. However, under the regulations governing the Office of Child Support Enforcement (OCSE) at 45 CFR 303.7(a), State CSE agencies must establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate CSE cases. Therefore, any problems arising from interstate cases should be minimal and do not need to be addressed in regulatory form for Food Stamp Program participants.

Several commenters stated that the FSRIA suggests that the Department develop a number of approaches to simplified reporting of a household's child support obligation. They felt that the single proposed approach, the use of CSE, was insufficient to satisfy the mandate of Congress. In the proposed rule, the Department asked for suggestions as to other simplified methods State agencies could employ to determine the amount of legally obligated child support payments made by households. A detailed discussion of the proposals made by commenters is provided below.

In order to allow the State's CSE agency to share information with the Food Stamp Program, the proposed rule would have required State agencies following this procedure to have households eligible for the exclusion or deduction sign a statement authorizing the release of the household's child support payment records to the State agency. Several commenters opposed this proposed procedure saying that it was unnecessary and burdensome. Some State agencies already have a system in place allowing local offices access to CSE records without any authorization. They asked the Department to omit this requirement and leave the accessibility of this information to be worked out between the local food stamp office and CSE. One commenter suggested that getting a signature might not be enough if there is no agreement between the food stamp office and CSE.

The Department proposed the provision in this manner because under the Child Support Enforcement Act and the regulations governing the OCSE, the State's computerized child support enforcement system must provide security to prevent unauthorized access to, or use of, the data in the system. Both the Child Support Enforcement Act (42 U.S.C. 654a(f)(3)) and the regulations governing the OCSE (45 CFR 307.13(a)) limit the accessibility of the Child Support Enforcement data to agencies that are necessary to perform the duties under the Child Support Enforcement Act, the TANF program and the Medicaid program. Therefore, legally, the State agencies administering the Food Stamp Program will have to obtain authorization for the use of the data in the State CSE system. The Department adopts this requirement as proposed. For those State agencies who are having difficulties in working with their counterparts in the State CSE agency, the Department is willing to work with DHHS or OCSE to assist any State that wants to take up this option and requests such assistance.

Commenters asked the Department to address what procedures a State agency should follow when a non-custodial parent declines to authorize the release of CSE information to the local food stamp office. As stated above, the removal of the requirement for States to rely solely on information provided by the State CSE agency should clarify any issues that may arise for individuals who make payments through the CSE agency but wish to provide alternative verification. The information provided by the individual must satisfy program verification requirements. The language in the proposed rule would have required State agencies that chose this option to include a statement indicating that they have implemented the option in their State plan of operation. The Department adopts this change as proposed since no comments regarding this requirement were received. The Department also proposed to make conforming amendments to 7 CFR 273.2(f)(8)(i)(A), and 7 CFR 273.12(a)(1)(vi) and (a)(4). The Department did not propose 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.

In the proposed rule, the Department asked State agencies interested in implementing this proposed provision whether there are any additional issues that the Department needs to address by regulation in order to make this an effective option for States. Commenters pointed out that issues may arise in instances of reunification or change in custody. They asked for clarification from the Department about how to handle these situations. They felt that it would be egregious to disregard a deduction or exclusion because the payment is being made to a household member and also require the household to report the payment as income.

The proposed rule refers parties to the final rule implementing the child support deduction, published on October 17, 1996, at 61 FR 54282 to find information on what qualifies as a child support payment for purposes of the income deduction and exclusion. That rule amended 7 CFR 273.9(d)(5) to allow a deduction for child support payments to or for a non-household member. The rule does not permit a deduction if a child support payment is made to a household member. However, if the child and the payor move into the same household but the payor is still obligated to make payments to a non-household member due to an arrearage or other circumstance, the payor is still allowed a deduction or exclusion. The proposed rule reflected this in the language that allowed a deduction, and now exclusion, "to or for a non-household member" and for "amounts paid toward child support arrearages." The proposed language addressed the concerns of the commenters so there is no need for further clarification. The Department adopts this amendment as proposed.

The Department also asked for 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. In addition to the suggestions discussed above, commenters suggested taking the opportunity to conform the treatment of outgoing child support payments to that of deductible dependent care or medical costs. This would make them an optional change reporting item. They proposed the deletion, rather than the amendment, of 7 CFR 273.12(a)(1)(vi). Some commenters proposed the codification of a provision of a question and answer policy memorandum that the Department issued following the passage of the FSRIA. That memorandum addressed the issue of a household's responsibility to report a change in their child support obligation. The memorandum clarifies that the requirement to report a change depends on the household's reporting requirements. It provides general guidance for procedures a State agency can utilize in setting forth these requirements. The guidance gives an example of a procedure that a State agency could use to address this issue.

The alternative approach listed in the memorandum states that an eligibility worker would provide each household with a reporting threshold. This threshold would include the sum of the monthly gross income limit for the household and its child support exclusion amount and then direct the household to report when its income exceeds this limit. The memorandum also highlights that there are other alternatives for reporting a change but does not go into details about these alternatives. Commenters felt that any other approach subjects child support to less favorable treatment than other deductible expenses, contrary to the intent of the FSRIA.

While the FSRIA permits the Department to develop simplified procedures for State agencies to determine the amount of a household's child support obligation, it does not speak to reporting changes in this obligation. In general, child support obligations change due to an unanticipated change in circumstances that may occur during the certification period. Given the small number of households claiming this deduction, and the fact that changes in the amount of the obligation do not have to be reported under simplified reporting, there should be little or no cost attributable to making this an optional change reporting item. Therefore, the Department will make reporting changes in a household's child support obligation an optional change reporting item. The final rule amends the language in newly redesignated 7 CFR 273.12(a)(6) and other sections of the rule to reflect this change.

Finally, commenters noted a numbering problem in the proposed rule. The rule proposed to insert new material on child support in 7 CFR 273.12(a)(4). The proposed rule did not take into consideration the redesignation of 7 CFR 273.12(a)(4) as 7 CFR 273.12(a)(5) in the final change reporting regulation. The Department appreciates the commenters calling this error to our attention. The final rule adopts the changes proposed for 7 CFR 273.12(a)(4) but inserts them into 7 CFR 273.12(a)(5) instead. Other provisions of the final rule are renumbered accordingly.

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. 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 for its household size, except for household sizes greater than six, which will receive the same standard deduction as a 6-person household. Section 4103 also requires that the standard deduction for any household not fall below the standard deduction in effect for FY 2002.

To implement Section 4103, the Department adjusts 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. If 0.5 or higher, the amount is rounded up to the next highest dollar; if 0.49 or lower, the amount is rounded 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 proposed rule contains a chart illustrating how the standard deduction for FY 2003 was calculated for the 48 contiguous States and the District of Columbia.

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. The same rules for households over six and the minimum deduction amount indicated above apply to applicants and current recipients in Guam.

Although some commenters felt that final rule should maintain the proposed rounding rules for the standard deduction, others pointed out that the rounding rules could lead to a calculation that is fractionally less than 8.31 percent of the net income limit. They noted that FSRIA requires that households receive a standard deduction equal to 8.31 percent of the program's net income limit. The provision in the proposed rule that called for the Department to round down where the number of odd cents in the exact figure is less than 0.50, would lead to a standard that is fractionally less than 8.31 percent. Therefore, commenters are requesting that the Department round up all fractional results to ensure that no household is denied a standard deduction "equal to" 8.31 percent of the net income limits.

The Department finds the comment has merit and simplifies program administration. Therefore, the final rule automatically rounds up the 8.31 percent calculation to the nearest whole dollar. This ensures that households are not denied a standard deduction "equal to" 8.31 percent. For example, if 8.31 percent of the monthly net income limit equals $146.34, the figure would be rounded up to a standard deduction of $147.

The Department also proposed that ineligible and disqualified members would not be included when determining the household's size for the purpose of assigning a standard deduction to the household. This would be consistent with other regulatory provisions that do not include ineligible and disqualified members in their calculations, including assigning a benefit amount.

While some commenters agreed that keeping this provision consistent with other eligibility provisions that look at household composition would help in achieving the goal of program simplification, others felt that treating some households as smaller than they actually are is inconsistent with the FSRIA's recognition that larger households have larger, inescapable costs. Additionally, commenters noted that Section 3(i) of the Food Stamp Act (7 U.S.C. 2012(i)) defines a household in terms of food purchasing and preparation patterns, family relationships, and living arrangements. Under that definition, an individual could be considered a member of the household whether or not they are eligible to receive food stamps. These commenters felt that the Department had no reason to deny households with ineligible members the full standard deduction, especially when it would unfairly reduce a household's food stamp allotment.

The Department has considered these comments but we continue to believe that only eligible household members should be included in the calculation for the standard deduction. Only eligible household members should be receiving the benefit; for that reason they are the only ones considered in determining the standard deduction amount. Therefore, the Department adopts the language from the proposed rule.

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 per month. State agencies may make households with extremely low shelter costs ineligible for the deduction. 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. 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 the current rules permit State agencies to develop their own homeless household shelter deduction up to a maximum of $143 per month, whereas Section 4105 mandates that the homeless household shelter deduction be $143 per month.

Commenters suggested that 7 CFR 273.2(f)(2)(iii) could be read to require homeless households to verify some shelter costs in order to receive the old and the new shelter deduction. They noted that the provision does not limit itself to cases where the homeless family's statements are questionable and the verification requirement largely undercuts the goal of simplification. Commenters suggested deleting 7 CFR 273.2(f)(2)(iii). The removal of verification requirements and proposed deletion of 7 CFR 273.2(f)(2)(iii) originates from a concern that eligibility workers may take it upon themselves to require verification from homeless households when it is not necessary. This may lead to fewer households receiving the homeless shelter deduction.

The Department has considered these comments. The final rule relocates 7 CFR 273.2(f)(2)(iii) from the provision about verification of questionable information to 7 CFR 273.2(f)(4) which addresses sources of verification. The final rule contains language to reflect that these sources of verification are for households who seek to claim actual expenses or if the State agency determines that households with extremely low shelter costs are ineligible for the deduction. It is necessary for the final rule to retain the provision about verification because households can still claim actual costs and amended Section 5(e) of the Act still makes it permissible for State agencies to make households with extremely low shelter costs ineligible for this deduction. However, current regulations clearly allow the State worker to give the deduction solely on the basis of the applicant's statement.

Commenters suggested that the Department has the latitude to allow States to assume that all homeless households have shelter expenses and wants the Department to provide the homeless shelter deduction simply based on a household's meeting the program definition of being homeless. One commenter noted that some States do not require verification of expenses for households to qualify for the standard homeless shelter deduction. They felt that this provides simple administration for the State and substantial benefit to households. Although this is a good point, other households are required to provide some evidence of shelter costs so the Department believes that State agencies should be provided with the latitude to ensure that households have some shelter costs before making a deduction. However, as stated above, the final rule relocates and amends the language of the provision to discourage State agencies from requiring verification from homeless households when it is not necessary.

Although Section 4105 only addresses the homeless household shelter deduction, the Conference Report (H.R. Conf. Rep. No. 107–424, at 537–538 (2002)) in its discussion of Section 4105, directs the Department to review current rules regarding allowable shelter costs and determine if, within existing statutory authority, the Department could make the rules less complicated and error prone for food stamp participants and eligibility workers. In response to this directive, the Department asked commenters to identify ways to further simplify existing procedures for determining eligible shelter expenses. The reason that the Department asked for recommendations and suggestions for simplification was to help identify program complexities so they could be addressed in future rulemaking. However, very few commenters provided suggestions that would be feasible under the current law.

One commenter suggested that States should be given the option to allow shelter expenses based on a standard such as project area or household size instead of the current dollar for dollar deduction. This option would be similar to the Standard Utility Allowance (SUA) that is revised annually based on current costs for residents.

The Department cannot establish a standard shelter deduction because the Food Stamp Act does not authorize the Department to develop such a deduction. Under Section 5(e)(6) of the Food Stamp Act, a household can only obtain a shelter deduction if their monthly shelter costs exceed 50 percent of their monthly income. In order for a caseworker to determine if the household's shelter costs meet this requirement those costs need to be assessed. Therefore, a standard deduction cannot be used in determining whether or not a household qualifies for a shelter deduction.

Another commenter suggested that the Department should have taken this opportunity to review the desk guide for eligibility workers and its underlying regulations to identify other complexities in the deduction that do not serve important purposes and can be eliminated without violating Congressional prohibitions. Commenters also urged the Department to further simplify the process to support low-wage workers' ability to obtain assistance but failed to identify ways to simplify existing procedures other than the proposed development of a standard shelter deduction. As stated above, the purpose of this request was to address issues that had rulemaking authority and ask for specific suggestions, not issue overall directives for the Department. Since commenters did not provide this information to the Department, the final rule adopts this section as proposed.

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 a 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 7 CFR 273.9(d)(6)(ii)(C) include the costs of heating and cooling; electricity or fuel used for purposes other than heating and 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. 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 a SUA that includes heating and 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 the living quarters with others. Therefore, if the State agency mandates the 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.

The Department proposed to amend current regulations at 7 CFR 273.9(d)(6)(iii) to incorporate the new requirements. Several State agencies commented that they have implemented this option and it has simplified policy significantly. No one opposed the implementation of this provision. However, one commenter noted that current regulations require States to update their SUAs annually to reflect changes in energy costs. That commenter wanted the final rule to clarify that this requirement applies to mandatory as well as non-mandatory SUAs.

The requirement for States to update their SUAs is based upon changes in energy costs, not on whether the SUA is mandatory. The regulations already clarify that State agencies must review their standards annually and make adjustments to reflect changes in energy costs. Therefore, the Department does not need to amend the current regulation regarding updating the SUA and adopts this section of the proposed rule as written.

The proposed rule also addressed two SUA-related issues. First, the Department proposed 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 proposed to amend 7 CFR 273.9(d)(6) to restore the proper title. We did not receive any comments on this change; therefore, the final rule restores the proper title to 7 CFR 273.9(d)(6).

Under the current rule, State agencies follow different procedures for prorating the SUA when the household includes an ineligible member. Some follow the rule at 7 CFR 273.11(c)(2)(iii) which requires the proration of shelter expenses if the ineligible member is billed for or pays the expense; others follow the rule at 7 CFR 273.9(d)(6)(iii)(F) which prohibits the proration of the SUA when the household shares the expense with an ineligible household 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.

To resolve any confusion related to prorating the SUA when ineligible members are present in the household, the Department proposed two alternative procedures and asked for comments on which procedure commenters prefer. The Department said it would incorporate the procedure that gets the most support into the final rule.

The first option allows State agencies to implement the Department’s original intention and not prorate the SUA when a household contains an ineligible member. The second option requires State agencies to prorate the SUA when the ineligible member pays either part or all of the expenses included in the SUA. Under the 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.

A significant majority of the commenters believed that the SUA should not be prorated for households with ineligible members for program simplification and benefit maximization. Field workers have a much better understanding of the SUA procedures when the full SUA is always allowed. Therefore, allowing the full SUA decreases the error rate for State agencies. One commenter stated that the regulations and Department policy made it clear that States must not prorate the SUA so there was no need for this clarification and if the Department decided to change this policy that it would be burdensome for the States, detrimental to recipients, and decrease participation rates. Based on the support for the first option, which does not allow States to prorate the SUA for households with ineligible members, the Department incorporates this option into this final rule.

One commenter noted that the proposed rule does not mention ineligible students. That commenter asserted that it is confusing to allow the entire utility allowance for all ineligible members except students. Ineligible members should include all individuals who reside in the household and purchase and prepare meals together but are excluded from participation based on regulations governing the Food Stamp Program. Under the current regulations, students are not included as household members; therefore the Department did not have to specifically mention them in the proposed rule.

One commenter proposed a third option, to allow the full SUA when the ineligible person pays only a portion of the utility bill and to prorate the SUA when the ineligible person pays the entire bill or is responsible for all expenses even if they are not paid. This same commenter suggested that the Department incorporate all three options into the final rule and allow States to select the option that they want to implement, giving States maximum flexibility. Due to the overwhelming support of the first option and the fact that this provision is meant to simplify the program, the final rule does not incorporate this third option.

Although the proposed rule did not address the issue of the LUA or propose any changes to the provision in the current regulations governing this allowance, the Department received a significant number of comments asking the Department to allow States to use the SUA for households that pay for only one utility. They noted that the proposed rule would continue to prohibit States from using a LUA for households that do not pay for heating or cooling and pay only one other utility bill. States have to collect information on actual expenses instead. Therefore, States have to keep questions about actual expenses on the application which undermines the purpose of the new law in simplifying the SUA. These commenters asked the Department to eliminate this complexity and allow States to use the SUA for households that pay for only one utility.

One commenter noted that the legislative history for the FSRIA suggests that it was the intent of

Congress to give States the option of providing a utility allowance to households with only one utility bill so more eligible families would find it easier to get the help they need. That commenter suggested that to deny the LUA to households who pay only one utility bill would be contrary to the intent of Congress and should be corrected.

The Department notes that the current regulations allow States to develop an individual standard for each type of utility expense. About fifteen States currently have single utility standards in place for certain utilities including non-heat electric, cooking fuel, water/sewer and garbage. Since there is already a provision in the current regulations that allow States to develop single standards, there is no need to amend the current rule.

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

Current regulations at 7 CFR 273.12(a)(1)(vii) allow 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. 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 7 CFR 273.12(a)(1)(i) through (a)(1)(vi). Section 4109 of FSRIA amends Section 6(c)(1) of the Act (7 U.S.C. 2015(c)(1)) 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 at least once every 6 months, but not more often than once a month.

1. In General

The Department proposed to move current regulations on simplified reporting from 7 CFR 273.12(a)(1)(vii) to 7 CFR 273.12(a)(5). The Department also proposed to amend the current rules to include several requirements that will be discussed in detail below. In general, commenters expressed overall support for the concept of simplified reporting; indicating that by reducing the reporting burden it would benefit both the State agency and the participating households. One State agency even noted that reforms like simplified reporting, which alleviate the workload for caseworkers, are critical for an overstressed and understaffed State agency. However, this commenter was concerned about additional requirements imposed by the proposed rule, as were many commenters.

The Department has decided to make very few major changes to the language contained in the proposed rule. This decision is due in part to the success of 50 State agencies who have implemented expanded simplified reporting systems with terms similar to those in the proposed rule. These State agencies are operating these expanded systems under the authority of waiver requests approved by the Department. These systems have addressed most of the potential adverse consequences proposed by commenters.

One commentator expressed the belief that eliminating the requirement to report circumstances that impact a client's eligibility and/or benefit levels is not in the best interests of the client or the taxpaying public. The same commenter, a State fraud investigator, also expressed the belief that the rules as proposed all but eliminate the ability to pursue an intentional program violation and/or sanction a client with the exception of an instance of the client's failure to report having exceeded certain income thresholds. Although we understand the commenter's concerns, simplified reporting is based on a statutory mandate. Therefore, we do not have the discretion to withhold implementation of expanded simplified reporting or to rescind the current regulations that provide State agencies with the simplified reporting option. Additionally, the program allows State agencies to ensure that participants are not committing intentional program violations.

Participants in a simplified reporting system are required to report changes at least twice a year, once during their periodic report and then again at recertification. At that time, the State agency has the opportunity to scrutinize any changes in the household circumstances that may go unreported, pursue any intentional program violations and sanction clients, if necessary. The goal of simplified reporting is to provide stable benefits to households with minor fluctuations in the benefit amount. Additionally, the simplified reporting option provides overall improvements in program administration and reduces error rates. The Department is satisfied that the simplified reporting system is efficient and maintains program integrity.

Commenters also suggested that FNS use this opportunity to correct a technical error in 7 CFR 273.12(a)(1)(v). This section requires households to report when the value of its resources equals or exceeds $2,000. The commenters noted that the provision fails to mention the $3,000 resource limit for households with an elderly or disabled member. Contrary to the belief of the commenters, this was not a technical error. The provision was designed to give all households one threshold to adhere to for reporting the value of their resources. Therefore, the Department will not amend this provision.

Under the proposed rule, a State agency that opts to utilize simplified reporting procedures would be required to 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. The Department did not receive any comments specifically addressing this provision so adopts the requirement as proposed.

2. Households To Include Under a Simplified Reporting System

Under the proposed rule, a State agency could 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. The Department did not receive any comments regarding this specific provision. Therefore, we are adopting this requirement as proposed.

3. Application of Simplified Reporting to Households Exempt From Periodic Reporting Requirements

Under the proposed rule, households exempt from periodic reporting under Section 6(c)(1)(A) of the Act, which includes homeless households and migrant and seasonal farm workers, would be subject to simplified reporting but would not be required to submit periodic reports. The certification periods of such households would be at least 4 months but not more than 6 months. Those that offered comments on this provision offered support. However, the FCEA provided that simplified reporting could be extended to all households. Therefore, in the final regulatory provisions on simplified reporting, we are dropping all references to the exclusion of elderly, disabled, homeless, and migrant and seasonal farm worker households in simplified reporting systems in a subsequent proposed rulemaking to implement provisions of the FCEA. Although not included in this preamble discussion, we note that commenters addressed reporting issues involving these households, particularly the elderly and disabled households. Commenters asked that the final rule include an option for the States to extend the simplified reporting option to any participant in their respective food stamp program, regardless of the household's gross income. They felt this would allow for a more consistent approach for clients and workers alike. One commenter expressed the mistaken belief that simplified reporting was limited to households with at least some countable income. Under the proposed rule, all households would have been included in a simplified reporting system. However, as discussed above, it is not to the advantage of the State agency or the participants to include certain households in a simplified reporting system due to the rules governing their participation in the Food Stamp Program. Therefore, this final rule adopts the proposed language.

4. Periodic Reports

Under the proposed rule, the State agency could have required most households subject to simplified reporting to submit periodic reports on their circumstances from once every 4 months up to once every 6 months. The Department did not receive any comments that specifically addressed this provision.

Under the proposed rule, the State agency would not have to require periodic reporting by any household certified for 6 months or less. However, households certified for more than 6 months would be required to submit a periodic report at least every 6 months. The periodic report form would 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 would be the sole reporting requirement for any information that is required to be reported on the form, except that households would be required to 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 7 CFR 273.24 would be required to report whenever their work hours fall below 20 hours per week, averaged monthly.

Commenters felt that the proposed language (regarding who must submit a periodic report and how frequently) was somewhat confusing and suggests that a State may impose both a periodic report and a recertification requirement on a household for the same month. They asked that final rule clarify that States may not require a periodic report at recertification.

The final rule does not make this clarification because it is highly unlikely that State agencies would engage in such a practice. Requiring households to submit a periodic report at recertification would burden a State agency as much as a household, create confusion at recertification, and completely undermine the purpose of simplified reporting.

Several commenters suggested that because monthly, quarterly and simplified reporting are forms of periodic reporting, the procedures for quarterly and simplified reporting should be moved from 7 CFR 273.12 to 7 CFR 273.21. These commenters also expressed the opinion that the move would provide for consistent client protection for all forms of periodic reporting.

Although the commenters raise a valid point, we still feel that it would be more appropriate to include the procedures for simplified reporting in 7 CFR 273.12. First, not all households subject to simplified reporting would be submitting periodic reports since State agencies would have the option of utilizing four to six-month certification periods rather than periodic reports. Second, certain households, such as homeless and migrant farmworker households, would be included in a simplified reporting system if they are assigned a 4- to 6-month certification period. Finally, 7 CFR 273.21 provides an alternative to the prospective budgeting system provided in the preceding sections with a system that provides for the use of retrospective information in calculating household benefits.

Under the language in the proposed rule, if a 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 State agency should follow the same procedure 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 the 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 also proposed to subject periodic reports to the requirements of 7 CFR 273.12(b)(2), which currently apply only to quarterly reports. This provision 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 a reduction or termination of benefits.

Several commenters felt that the proposed notice and form requirements for periodic reports would provide inadequate protections for households that participate in simplified reporting. Commenters noted that in the 1980s, during the Reagan Administration, FNS recognized that periodic reporting systems carry the risk that some eligible households may lose benefits for purely procedural reasons. As a result, the agency built into its monthly reporting regulations provisions to ensure that the potentially burdensome requirements of monthly reporting are implemented as fairly as possible. The commenters felt that the Congress clearly intended to extend monthly reporting protections to simplified reporting. They believed that Representative Stenholm specifically insisted that the monthly reporting protections would apply to simplified reporting in his floor statement on the final bill. In his statement, which can be found in the Congressional Record at 148 Cong. Rec. H2044, Representative Stenholm stated that Congress assumed that the Department's rules for monthly reporting would apply to the simplified reporting option. This would include providing households with the opportunity to supply missing information when submitting a late or incomplete semiannual report.

The commenters believed that the proposed rule failed to follow Congressional intent because it does not extend these protections to all forms of periodic reporting. They felt that it is critical that FNS extend the most important monthly reporting procedures to all other forms of periodic reporting. They noted that this could be accomplished by a reference to the appropriate sections of the monthly reporting regulations at 7 CFR 273.21(c), 273.21(h), 273.21(j), and 273.21(k). The commenters felt that the most important monthly reporting procedures include using: (1) Forms and processes that participants can understand; (2) procedures for missing or incomplete reports that do not penalize households that may be attempting to comply; and (3) procedures for issuing benefits that allow for timely issuance. The commenters provided a detailed list of the citations and provisions that they felt should be referenced.

The Department agrees with the basic premise of these comments. The final rule modifies the proposed language to incorporate the procedural protections the Department feels are necessary to provide protections for households participating in simplified reporting. Several of the procedures applicable to a monthly reporting system are not applicable to simplified reporting. Additionally, several of the procedures that are listed in these sections are either provided under this rule or are contained within the current regulations in a manner that is applicable to the provisions of 7 CFR 273.12. For example, 7 CFR 273.12 contains provisions regarding processing reports, issuing notices, the timely issuance of benefits and consequences for incomplete filing as they relate to various changes. Since the rules governing periodic, quarterly, change and monthly reporting vary, the regulations need to contain provisions consistent with each type of reporting system. Therefore, the Department has applied those procedures that it feels are necessary to provide protection to participants while maintaining the overall principles of simplification.

Commenters also asked that the regulations clarify that if a household files a report on time, its benefits may not be terminated simply because the State agency fails to process the report. They pointed out that some computer systems may automatically terminate benefits if an eligibility worker does not process a periodic report, even if the household filed the report on time and it contained all of the necessary information. They felt that since quality control counts improper issuances but not improper denials, States will set their systems to err on the side of caution and implement systems that operate in favor of automatic suspensions. The commenters felt that the final rule should prohibit the reduction or termination of benefits to a household unless an affirmative decision is made that the household is either ineligible or in default of its procedural obligations.

The Department will not amend the regulations to accommodate this comment because a State agency will not avoid quality control or fiscal sanctions by suspending or terminating benefits due to the untimely processing of a periodic report. In assessing a case for quality control purposes, the reviewer conducts an analysis of all variances in elements of eligibility and basis of issuance. If the benefits of a household are suspended, the case may still be selected for quality control review. State agencies are expected to process reports in a timely manner and when they fail to accomplish this goal, they may be sanctioned accordingly. Benefits shall not be terminated due to an untimely processing of a periodic report but a suspension will help avoid making an overpayment or an underpayment to the household.

One commenter noted that under the proposed rule, a State agency would be allowed to elect to combine a notice of a missing or incomplete report with a notice of termination. Should a State agency make this election, it is not clear how long a household has to respond to the notice and be reinstated. The Department proposed that if a household fails to complete a report by a specified filing date, the State agency would then 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 that notice, then the household's participation would be terminated. The language in the proposed rule would have allowed State agencies to combine the notice of a missing or incomplete report with the adequate notice termination. As stated above, the final rule amends the language in the proposed rule to include some procedural protections for households participating in simplified reporting.

One commenter disagreed with the requirement that all able-bodied adults without dependants (ABAWDs) report as soon as their work hours go below 20 hours per week if they are in a simplified reporting system. The commenter felt that this rule needlessly complicates simplified reporting and is inconsistent with the current regulatory provision that requires an ABAWD to report changes in work hours in accordance with the reporting system to which he is subject. The commenter interpreted this provision to permit an ABAWD subject to simplified reporting to only report a loss of job on their interim report or at recertification. The commenter asked that the Department clarify the ABAWD reporting requirement to ensure that these participants only report a change in their hours as a part of the reporting system to which they are subjected, and no more. This same commenter also asked that the Department eliminate the additional ABAWD reporting requirement for those on quarterly reporting at 7 CFR 273.12(a)(4)(iv). We disagree with the commenter and adopt the language as proposed. First, we believe that compliance with the ABAWD work requirement is a condition of eligibility, and, as such, must be reported as soon as the household member's hours of work change. Second, we wish to note that the language in 7 CFR 273.12(a)(5)(iii)(E) of the final rule (the phrase "as part of the reporting system to which they are subject") was intended to harmonize reporting requirements for all households containing ABAWDs. The Department initially added the phrase to the regulations at a time when households were either subject to change reporting under 7 CFR 273.12(a) or monthly reporting under 7 CFR 273.21. We determined that a consistent reporting standard should apply to these participants because the ABAWD work requirement is an explicit condition of eligibility and up to 6 months may elapse before a household may be required to report a change in income.

5. Reporting When Income Exceeds Gross Income Limit for Household Size

Under the language in the proposed rule, households subject to simplified reporting would be required to report when their monthly gross income exceeds the monthly gross income limit for their household size. Households would 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 did receive support for this provision. Commenters noted that under the current rules, State agencies take different approaches to these reporting requirements. Some agencies use the income limit for the household size at the time of the initial certification while others use the household size at the time of the report. These commenters believe that the proposed language would resolve this confusion by requiring State agencies to use the income limit for the household size at the time of their initial certification. The commenters noted that this change is easier for households to understand. It allows local offices to give households one figure, and explain that if the household income goes over this set figure then the household needs to report to the local office.

Although commenters provided overall support, they did have some issues with the proposed regulatory language. Some felt that the proposed regulatory language was incomplete because virtually all States have some participating households with a gross income in excess of the 130 percent threshold, including elderly and disabled households with earned income or households who are categorically eligible. The commenters asked the Department to clarify that States may use simplified reporting for these households and articulate that States may set their reporting threshold to equal the Program's gross income limit that triggers categorical eligibility. They felt that this requirement could prohibit States from extending simplified reporting to these households.

The Department does not see the need to amend the proposed regulatory language to accommodate the few households who may fall under this scenario. The Department has already issued guidance that leaves the treatment of these households up to the States. Because these households are not subject to the gross income guidelines, they would not be subject to this income threshold. Therefore, the guidance issued by the Department suggests that once households report going over the 130 percent threshold, their reporting requirement is met and States need not require further reporting. This practice will be easier to administer than throwing off an entire system for a few households for whom this reporting threshold would apply.

Commenters also stated that the proposed language for this requirement was confusing because the language did not specify what action the State agency should take. The commenters noted that by contrast, the proposed rule at 7 CFR 273.12(a)(5)(v)(A) would instruct State agencies to act in accordance with 7 CFR 273.12(c) when they receive information that the household was not required to report. Commenters felt that the final regulation should amend the proposed language at 7 CFR 273.12(a)(5)(v) to require State agencies to act in accordance with 7 CFR 273.12(c) when acting on a household report that its gross monthly income exceeds the gross monthly income limit for its household size.

These commenters were concerned that State agencies may issue a Notice of Adverse Action (NOAA) to households experiencing a temporary increase in their income which would normally not result in ineligibility. This could result in a decrease or termination of benefits if the household fails to clarify that the increase was only temporary. Therefore, they asked the Department to remind States that it is inappropriate to routinely issue a NOAA in response to a report that the household's income has exceeded the gross income limit. In many cases, further information is needed to determine the appropriate course of action.

While we agree that, in certain cases, the State agency should follow-up on reported changes to ensure that the household's eligibility would actually be affected, we fail to see why there is a need to elaborate on this in the regulatory language. A similar situation currently exists with respect to change reporting and, for the most part, States have not experienced problems in determining when a change is temporary or when it would actually affect the household's eligibility.

One commenter, a State agency, expressed the opinion that requiring households to report when income exceeds 130 percent of the federal poverty level does not work well for households with an ineligible noncitizen. In this instance, the State agency prorates income according to the rules at 7 CFR 273.11(c)(3). Because determining the countable gross income for households with ineligible members can be complex, the commenter implied that it may be difficult to implement this reporting requirement for households with ineligible members.

Since this income limit is applicable to most households, except elderly or disabled households, the final rule also includes this reporting requirement. Under the current rules at 7 CFR 273.11(c)(3), State agencies who prorate income must elect one State-wide option for determining the eligibility and benefit level of households with ineligible aliens. The State agency should continue to follow the same formula for determining whether the income of the household has exceeded the 130 percent threshold. For example, if the State agency excludes the ineligible members for determining household size at the initial eligibility determination, they will continue to do so for this reporting requirement.

6. Acting on Changes Outside of the Periodic Report

The Department proposed to give the State agency 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 would be allowed to 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 public assistance or general assistance grant.

Second, the State agency would be allowed to 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 Rule, the Department approved a number of waivers requesting this latter procedure. To eliminate the need to approve future waivers, the Department proposed to incorporate the procedure as an option in the regulations.

While the proposed provision providing State agencies the option to act on all changes did receive support, several commenters felt that this option could adversely impact millions of food stamp households. Most of the concerns lay with the possibility that State agencies would act on changes reported to other benefit programs. This will be discussed in detail below. However, some commenters also had concerns because this proposed option would allow States to reduce benefits and limit food stamp participation which is contrary to the intent of simplified reporting. As stated above, the Department incorporated this provision into the proposed rule to further simplify reporting requirements. Several State agencies are currently implementing this option successfully under waivers with it having a minimal impact on limiting participation.

Several commenters expressed the opinion that allowing State agencies to act on all changes will reduce the advantage of using simplified reporting because it will not reduce the workload. While the Department encourages State agencies to limit the action it takes on changes reported in a simplified reporting system, the Department also understands that the Food Stamp Program is not operated in a vacuum. Therefore, State agencies need a common automated system to effectively operate all of their benefit programs. To simplify these automated systems, it is easier for an eligibility worker to enter a change into the system and allow the system to process the necessary calculations and issue the proper notices as a result of those calculations for all benefit programs rather than determine the impact of the change on each individual benefit program. The Department encourages State agencies to harmonize their systems to allow this option to reach its full potential. However, we cannot require State agencies to perform such an act and, as stated above, the success of this option for State agencies currently initiating it under a waiver demonstrates that it should be maintained in this final rule.

7. Acting on Changes That a Household Reports to Another Public Assistance Program

Under the proposed rule, State agencies that choose to act on all reported changes would not be required to act on changes that 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 was proposed 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.

The Department received several comments on this provision. First, commenters suggested that the Department prohibit State agencies from acting on changes reported to other programs that would result in a decrease in benefits if the changes are not otherwise subject to the simplified reporting requirements. The Department does not include this prohibition in the final rule because the primary purpose of the simplified reporting option under Section 4109 of FSRIA is to increase State flexibility and decrease administrative burden.

Commenters also felt that the Department went beyond the Congressional intent by including an option for making adjustments based on reports made to other assistance programs. The commenters point out that the statutory language governing simplified reporting expressly limits reporting to circumstances in which the household's benefit exceeds the gross income limit. Congress did not include a provision for benefits to be adjusted based on information provided to another program.

The reason why the Department includes this provision as an option is to assist State agencies that have multi-program computer systems. This option provides simplification to those agencies because they do not have to adjust their computer systems to account for changes reported to the Food Stamp Program and those reported to other benefit programs. It also assists households because they do not have to remember the various reporting requirements for each assistance program and can make one report that will impact all of their benefits.

Additionally, commenters expressed concern with the State option to act on changes reported to other programs, based on the belief that the option would add administrative complexity to the simplified reporting system. One commenter pointed out that, in their State, eligibility workers manage several programs for the same client. In a situation like that, the caseworker has to first determine what program the client is reporting the change for, then make adjustments based on the impact that the change has on the other program's benefits and the potential change it may have on the client's food stamp benefits.

The commenters felt that this would be very complex and time consuming for eligibility workers in addition to being error prone. They asked that the Department allow them to act on changes reported to another program if it is verified by the other program. Commenters also asked that the final rule include exemptions for follow-up requirements for simplified reporters who have joint benefits with another program that has more stringent reporting requirements.

We wish to emphasize that allowing a State agency to utilize information reported to other programs is an option and we anticipate that only States with automated systems designed to implement changes in multiple programs simultaneously would utilize the option. Therefore, the time consuming, complex formula will be handled by a computer system, not the eligibility worker. Additionally, if a State agency needs to verify information and the other program has more stringent reporting requirements, the information provided for that program will satisfy the reporting requirements for the Food Stamp Program.

As stated above, in the last several years, the Department has approved a number of waivers allowing States to act on all changes reported to other assistance programs, primarily because these States utilize multi-program automated systems that simultaneously implement changes in all of the State-administered assistance programs, including the Food Stamp Program. Although participating households may benefit from the delayed implementation of changes that would reduce their benefits, this benefit to a few participating households is outweighed by the overall increase in administrative efficiency for the State agencies. Additionally, households have protection because before making a reduction in benefits, State agencies must follow the advance notice procedures of 7 CFR 273.12(c)(2). These procedures enable households to contest their benefit reduction and continue receiving benefits.

Commenters also asked the Department to define what it means to "trigger an action in another program." Apparently they were concerned that most changes reported to other programs would trigger an action in the other program. Therefore, the State agency would have to take action in the food stamp case for almost all of the changes reported to other programs.

The intent of this provision is to give States the ability to develop a simplified reporting system that would meet the needs of their multi-program eligibility system. The Department is allowing the State agencies, in their policies, to define what it means to "trigger an action in another program." State agencies are required to have clear, uniform rules on what changes they should act on and what changes they should not act on. The State agency cannot leave it up to the eligibility worker to determine how to define the "triggers"; the policy needs to be implemented in their Statewide policies and procedures.

8. Using the Request for Contact for Verification of Changes That Are Not Subject to Mandatory Reporting

In cases involving changes reported to another program, issues of verification arise because the requirements for the various benefit programs differ. Although it would be ideal for all benefit programs to develop similar verification requirements, State agencies do not have the authority to develop their own, uniform verification requirements. Under the current and proposed regulations, States are permitted to pursue clarification and verification of reported changes that may be unclear to the caseworker. Commenters expressed concern over the use of the Request for Contact (RFC), specifically it's used to obtain clarification of information not subject to mandatory reporting in a State's simplified reporting system. Under simplified reporting, most changes do not need to be reported between reviews or reports. As discussed above, if a household reports information pursuant to the reporting requirements in another program, such as Medicaid or TANF, current rules often require (and the proposed rule would require) the caseworker to evaluate the report for its impact on the household's food stamp benefits.

Commenters felt that the most client-friendly approach would be to follow the existing procedures at 7 CFR 273.12(c)(1) and (c)(2). Using these rules, the State would send a food stamp request for verification if the household reports a change that would lead to an increase in benefits. If the household fails to respond to the request for verification, it would forfeit the benefit increase but would not lose eligibility. If the change suggests a decrease in benefits, but not ineligibility, the State would send a Notice of Adverse Action (NOAA) informing the household that benefits would be reduced unless the household disagrees. If the household fails to respond to this notice, the caseworker would reduce the benefits without terminating the household.

Commenters also noted that one of the reasons for the use of the RFC process set out in 7 CFR 273.12(c)(3) is that it provides States with better quality control protection because there is no risk that a quality control reviewer will question the caseworker's decision to freeze or adjust benefits without verification. Unfortunately, if the household fails to respond to the RFC, it will be terminated from the Food Stamp Program. This is true even when the household is eligible for a benefit increase based on the reported change.

Commenters felt that this outcome clearly contravenes the intent of simplified reporting. The system was intended to reduce paperwork and decrease the number of households who fall out of the Food Stamp Program because they do not respond to a RFC. Commenters expressed the belief that as the result of quality control pressure and the need to respond to unverified reports for other programs, simplified reporting has been reduced to a version of change reporting.

Although the Department does not agree with the overall principle of utilizing the RFC process to obtain additional verification in a simplified reporting system, we need to provide the State agencies with the flexibility to request verification of reported information that they may deem questionable. Under the current regulations, State agencies should only resort to the RFC process to obtain information about changes where they cannot readily determine the effect of the change on the household's benefit amount. Therefore, the Department encourages State agencies to only resort to this process when they deem information to be questionable. However, as stated above, we need to allow States to utilize this process for information that they deem unclear. Therefore, we will not amend the language from the proposed rule to accommodate this comment and adopt this language as proposed.

Commenters noted that the Congressional intent in crafting simplified reporting was to establish a 6-month benefit freeze. The only exception was to require households to report if their income exceeds 130 percent of the federal poverty limit. The commenters felt that by requiring States to seek additional verification from households that report to other programs, the Department is suggesting that Congress intended to single out these households who comply with other program requirements and subject them to additional verification requirements. This results in putting their case at risk. As stated above, the Department discourages State agencies from utilizing this process unless they feel that the information provided is too unclear for the State agency to determine the effect of the change on the household's benefit level.

Simplified Determination of Deductions—7 CFR 273.12(c)

Current rules at 7 CFR 273.9(d) provide households with six income deductions. The deductions are subtracted from a household's non-excluded monthly gross income to determine its monthly net income. A household's eligibility for and the amount of a deduction are established at the household's certification. Current rules require a participating household to report certain changes in circumstances that occur during the certification period. These rules vary depending on the reporting system utilized for the household. Some of the changes that must be reported may affect a household's deductions.

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 circumstances 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 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 requires 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 proposed to amend current regulations at 7 CFR 273.12(c) to comply with the provisions of Section 4106 of FSRIA discussed above. To provide State agencies with maximum flexibility, the Department proposed that State agencies be permitted to ignore changes that affect deductions that are reported by the household and changes that the State agency learns from a third party. However, the State agency would continue to be required to act on changes in earned income and changes in shelter costs arising from a change in residence.

Commenters requested that the Department clarify that whenever the State recomputed the household's earned income for any reason, it should adjust the household's earned income deduction to be 20 percent of the new amount. The Department addressed this in the proposed rule by stating that it is retaining the current rules in the area of making appropriate changes to the household's deductions when there is a reported change in earned income. This would include adjusting the household's earned income deduction to be 20 percent of the new amount. The Department does not believe that there is a need for further clarification in the final rule so adopts this change as proposed.

Several commenters supported the provision in the proposed rule that would permit States to ignore changes that affect deductions because it would ease administrative burden. However, commenters asked the Department to clarify what procedures States should follow when a household reports a change in address but does not report or verify the shelter costs associated with the new residence. The commenters believed that if a State opts to ignore changes that affect deductions and a household just reports a new address, the household has no obligation to report a change in shelter costs.

Under current program guidelines, if a household reports a change in residence but fails to report the associated shelter costs those costs may be removed from the household budget. Regardless of any verification requirements, if a household fails to report a change in shelter costs and these costs have changed due to a reported change in residence, it is inappropriate to continue to allow a deduction for the former amount. With regard to any potential verification necessary for clarification, if a State agency has elected to verify these costs, it is also inappropriate to continue to allow a deduction for the former amount. However, if a State agency opts to verify this deductible expense, they need to advise the household of additional verification requirements and state that failure to provide verification shall result in a recalculation of their benefits without the deduction. This final rule amends the appropriate regulatory language to clarify this procedure.

Additionally, commenters noted that sending a household a RFC requiring the household to submit shelter expense information when it reports a change in residence is inappropriate because the consequence of the household's failure to respond would be closing the case. It was suggested that a better approach would be for the food stamp office to send the household a notice stating that its allotment will be recalculated without the shelter deduction unless the household provides verification of its new shelter expenses within a specified period. The notice would make it clear that the household does not need to wait until it makes its first regular utility or rental payments to contact the food stamp office with verification, as alternative forms of verification can be accepted.

As stated above, the Department believes that although shelter costs are not listed among the traditional mandatory verification requirements, a State agency may elect to verify this information if it is questionable. However, they should not close a case for failure to verify. Instead, they should recalculate the benefit amount without the deductible expense.

Another commenter asked that the final rule make it explicit that State agencies are not required to change the shelter deduction of households with unreported changes in address to avoid inappropriate attribution of claims and quality control errors. The Department adopts the change as proposed and does not amend current regulatory language for two reasons. First, the regulations already require State agencies to change the shelter deduction for change reporting households but not for simplified reporting households. Second, the regulations specifically state that required change in shelter expenses would result from a reported change in residence.

Under the proposed rule, a State agency would have 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. Commenters noted that allowing State agencies to disregard reported changes in deductions would avoid client errors, reduce paperwork and be beneficial to the local offices since customers would feel better served when they do not have to constantly report changes to the local office. However, commenters also noted that if a State takes the option to freeze deductions, denying households the deductions for which they are newly eligible could involve a much more radical benefit reduction than anything Congress intended. As a result of these comments, the final rule requires States who choose to freeze deductions to allow households to claim deductions for which they become newly eligible during their certification period.

The State agency may also ignore changes in deductions for certain categories of households while acting on changes in those same deductions for other types of households. The Department proposed that a State agency cannot 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 deduction would unfairly harm households, while acting only on changes that would increase a deduction would increase program costs beyond what was anticipated when the provision was enacted.

Commenters supported this provision because it will simplify program administration. However, one commenter stated that the rigidity of the proposed rule in this area is not consistent with the rule's other provisions and the intent of FSRIA to provide State flexibility. The commenter asked the Department to provide State agencies the flexibility to act only on changes that would increase a household's benefit. As stated above, the Department believes such a course of action is untenable. The impact of this provision is so minimal and so few commenters opposed the provision that the Department adopts this proposed amendment as final based on the rationale set forth in the proposed rule.

Another commenter suggested that the Department make this provision consistent with simplified reporting rules by requiring States to act on changes only if they are verified upon receipt. Under simplified reporting, the verified upon receipt rule applies to changes that decrease benefits. Since this provision differs in that we are discussing changes that would increase or decrease benefits, the rules will differ. Therefore, the Department rejects the commenter's suggestion and adopts the language as proposed.

The Department also proposed to include in the final regulation one of two potential limitations on the provisions 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 6th month for households that are certified for 12 months. The Department asked for opinions on these restrictions in addition to suggestions for reducing their potentially harmful effect.

One commenter supported the limitation of requiring State agencies to act on changes that affect deductions after the 6th month for households who are certified for 12 months. They noted that this would be relatively easy for a State agency to administer given the requirement that certain households need to file a periodic report after 6 months. Another commenter supported the requirement that States act on changes that exceed a certain dollar threshold while noting that they were unsure that either limitation would adequately prevent the potential hardship caused by freezing all deductions. Other commenters were opposed to both limitations stating that each one would unnecessarily complicate program administration and defeat the purpose of simplification. It was suggested that States be permitted to act only on reported and verified changes that result in an increase in deductions. None of the commenters provided viable alternatives to the options listed by the Department. The Department has considered these comments and the final rule incorporates a provision that requires State agencies to act on changes that affect deductions after the 6th month for households who are certified for 12 months. The Department also proposed a limitation on the State agency option to disregard reported changes that affect deductions for households assigned 24-month certification periods. Under current regulations 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 at least one contact every 12 months with elderly and disabled households certified for 24 months.

The Department proposed 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. Most commenters supported this provision because it provides a good compromise between protecting these households from the adverse effects of an increase in household expenses and simplifying program administration. One commenter supported the provision but asked that the Department allow State agencies to have the option to act immediately on changes that would result in an increase in deductions or benefits. Another commenter disagreed with the proposed rule and suggested that an alternative approach be identified but did not offer any suggestions for this alternative approach. The Department has considered these comments and adopts the language as proposed.

In addition to amending current rules at 7 CFR 273.12(c), the Department proposed to amend current regulations at 7 CFR 273.21 to allow the State agency to disregard 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 of reported changes in earned income and changes in shelter costs related to a change in residence. The Department did not receive any comments specific to this provision so we are adopting the language as proposed.

The Department also proposed to modify current rules at 7 CFR 273.12(b)(1) and (b)(2) and 7 CFR 273.21(h)(2) to require the State agency to give notice in all change, periodic, and monthly report forms if it intends to postpone changing deductions until the household's next recertification. The Department did not receive any comments specific to this provision, so we are adopting the change as proposed.

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

1. Transitional Benefit Program Summary

Current regulations at 7 CFR 273.12(f)(4) provide State agencies the option to offer transitional food stamp benefits to households leaving the 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 NCEP proposed rule. Interested parties may refer to the preamble of the NCEP final rule and 7 CFR 273.12(f)(4) for a complete description of the regulatory scheme. 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. To accommodate changes to this option and clarify the current regulations, the final rule divides Part 273 into subparts. Except for the addition of Subpart H, this restructuring is for clarification purposes only and does not result in any substantive change to the current regulations. The final rule implements the statutory changes by removing 7 CFR 273.12(f)(4) and restructuring the regulations to add a new Subpart H that contains the revised policy in 7 CFR 273.26 through 7 CFR 273.32. A distribution table is published at the end of the preamble of this final rule for reference purposes and adjustments have been made to any references made to this provision in other sections of the regulations.

A. Households Who Are Eligible

The Department proposed to amend the current regulations at 7 CFR 273.12(f)(4) by eliminating the requirement that transitional benefits be provided, at a minimum, to all households with earnings who leave TANF. In addition to households disqualified by statute, the Department proposed to give State agencies unqualified authority to designate the categories of households eligible for transitional benefits.

The proposed rule would have given State agencies the option to provide transitional benefits to formerly mixed TANF households as well as households where all members received TANF. A mixed TANF household is one in which only some members were receiving TANF. Commenters supported this provision because it provides States with needed flexibility. The Department adopts this amendment as proposed.

B. Households Who Are Ineligible

Section 4115 modified the types of households who are ineligible for transitional benefits. The Department proposed to amend 7 CFR 273.12(f)(4) to update the list of households that are ineligible for transitional benefits to reflect the requirements of Section 4115. Because Section 4115 refers to ineligible households rather than ineligible household members, the Department interpreted this provision as applying only when the entire household is ineligible under Section 6 of the Act. A household with an ineligible member would be still eligible for transitional benefits if the remaining members of the household are eligible for food stamps.

Commenters supported the Department's judgment and agreed that it was Congress's intent to give States the option to provide transitional benefits to a household that contains members who are not in the TANF unit as well as those that contain ineligible members or members who are under a TANF sanction. Commenters asked that the Department clarify that when a household is under partial sanction but is still receiving TANF, if the assistance ends for another reason, the household may receive transitional benefits.

There has been confusion among State agencies about whether households under a partial TANF sanction can receive transitional benefits if the case closes during the sanction period for another reason. The language in the proposed rule clearly states that the State agency may not provide transitional benefits when a household is leaving TANF due to a TANF sanction. Therefore, a household will not be penalized because they were under a partial sanction; the sanction has to be the cause of the case closure in order for the household to be deemed ineligible for transitional benefits. Therefore, the Department adopts this amendment as proposed.

2. Administrative and Procedural Changes

A. The State Plan

The Department proposed to require State agencies to include in their State plan of operation that they are providing transitional benefits and specify the categories of households eligible for such benefits and the maximum number of months for which the transitional benefits will be provided. The Department also proposed to add a provision to 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 adopts the amendment as proposed since we did not receive comments directly opposed to this provision.

B. The Transition Notice

The Department proposed to maintain the existing requirement that the State agency issue a transition notice. However, the Department proposed to modify the contents of the notice. The notice would have to inform the household of its eligibility for transitional benefits, the length of the transitional period, and that it has a right to apply for recertification at any time during the transitional period. The language in the proposed rule also would have required the notice to explain any changes in the household's benefit amount, and that the household is not required to report or verify changes in household circumstances until the deadline established in a written RFC or at their recertification interview.

The Department also proposed to remove the requirement 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. The Department proposed to remove this requirement to simplify program administration. However, the language in the proposed rule would have required that the notice clearly advise households to apply for recertification if they experience a decrease in income, an increase in expenses or an increase in household size during the transition period.

Commenters asked that the Department include in the list of notice requirements a statement that households that apply for TANF cash assistance will be asked to reapply for food stamps at the same time. Proposed 7 CFR 273.12(f)(4)(vi)(C) states that the transition notice must contain 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. The Department believes that this provides parties the needed flexibility and notifies participants of the procedures they will undergo if they apply for TANF cash assistance. Therefore, the Department will not incorporate the commenter's recommendation into the final rule and adopts this amendment as proposed.

Commenters also requested that the Department include a requirement that States inform households that they do not need to receive TANF to be eligible for food stamps at the end of the transitional period and that they are likely to remain eligible at the end of the transitional period if their income remains low. Additionally, commenters requested that the notice encourage people to reapply for food stamps. The Department has considered these comments and while we encourage State agencies to include this sort of information in their notice, it is not something that the Department will prescribe in regulations.

3. Increase in Transitional Period

Section 4115 lengthens the transitional period from up to 3 months to up to 5 months. In view of this requirement, we proposed language that would permit 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 5 months of transitional benefits. The Department proposed to amend 7 CFR 273.12(f)(4) to change the length of the transitional period from up to 3 months to up to 5 months.

The Department did receive one comment stating that the proposed extension from 3 months up to 5 months is not warranted as the current transitional period is ample time for households to make the transition from TANF, bounce back from their hardship and apply for other benefits. This provision was mandated by the FSRIA and not something that the Department has the authority to modify. Therefore, we are adopting this amendment as proposed.

4. Adjusting Benefit Amount

Currently, 7 CFR 273.12(f)(4)(ii) requires 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. The provision at 7 CFR 273.12(f)(4)(iii) addresses the State agency's requirement to act on changes in circumstances that the household reports during its transitional period. In addition, this provision 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 Department proposed to amend the regulations at 7 CFR 273.12(f)(4) to note that in addition to adjusting the household's food stamp benefit amount before initiating the transition period to account for decrease 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.

Commenters wanted the Department to clarify that the correct transitional food stamp benefit amount for all purposes, including quality control, is the amount of food stamps received in the month prior to TANF case closure, adjusted for the loss of cash assistance. The Department's quality control guidance has followed and will continue to follow certification policy. Therefore, there is no need to place an additional provision about quality control under this section. Additionally, the proposed rule already contains language about how to calculate the correct transitional benefit level. Therefore, the Department adopts this amendment as proposed.

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 with the same benefit it received prior to termination of TANF for a fixed number of months, 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. The household is protected from being denied an increase in benefits by having the option of applying for recertification at any time during the transitional period. Therefore, the Department proposed to remove the requirements at 7 CFR 273.12(f)(4)(ii) and (f)(4)(iii) regarding the State agency's obligation to notify the household that it may report changes during the transitional period and the requirement that the State agency act on changes reported by the household that would increase the household benefits. The Department did not receive any specific comments opposed to the deletion of these requirements so adopts the amendment as proposed.

Although the Department deleted these provisions as requirements, the proposed rule still would have provided State agencies with the option to adjust the household's benefit amount in accordance with 7 CFR 273.12(c) or make the change effective in the month following the last month of the transitional period. Commenters pointed out that this option runs contrary to subsequent program guidance that provides that a State cannot act on other reported changes aside from changes made due to information received from other programs. The Department considered these comments and removed this option from the final rule.

The Department proposed that the State agency be required to act if a member of the household receiving transitional benefits moves out during the transitional period and either reapplies as a new household or is reported as a new member of another household. The Department proposed 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 State agencies follow in the regular program when a household member moves from one participating household to another.

One commenter said that households should not be required to report any changes and staff should not have to act on these changes. Other commenters asked that the Department clarify that States must make this adjustment without requiring any additional information or verification from the household. They felt that requiring a household to report or verify information defeats the purpose of the benefit. Some commenters also noted that this provision increases the administrative burden on State agencies.

While we agree with commenters that the transitional benefit is meant to be a frozen benefit amount for the duration of the benefit period, the Food Stamp Act strictly prohibits duplicate participation. When a household member leaves and either reapplies or becomes a member of a new household, that household member takes their income and resources with them. Consequently, the State must adjust both households' allotments in accordance with 7 CFR 273.12(c) to ensure that the individual's income and resources are accounted for accordingly. However, there is no need to get any additional information from the household to adjust the benefit amount for the household receiving transitional benefits. Therefore, the Department retains this requirement in the final rule.

To provide maximum flexibility to State agencies, the Department proposed to permit State agencies 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. Commenters requested that the Department clarify the proposed rule in numerous places to appropriately reflect the Congressional intent regarding the benefit freeze. Commenters suggested that the Department change the language in the proposed rule to mandate a benefit freeze and then note exceptions to the freeze. The Department has considered this comment and we adopt the language as proposed as this is an optional provision and the exceptions to the freeze are noted in the final rule. Commenters also asked that the Department clarify that States may act on income information from another program either before setting the transitional benefit amount, during the transitional period or both. They want to ensure that States are given the option to adjust the amount based on information from other programs before freezing the benefit amount and have the option to make this the only time that they act on information from another program. They point out that there is nothing in the law to suggest that acting on information from other programs is an all-or-nothing option. The Department has considered these comments. This final rule modifies the proposed language to give State agencies the ultimate flexibility in accordance with the intent of the FSRIA.

Several commenters had concerns regarding verification requirements for changes resulting from information reported to other programs. They asked that the final rule clarify that if States opt to act on information that they receive from other programs, they may not require any additional verification from the household. If the information reported to the other program is insufficient to meet food stamp guidelines, the State should continue the transitional benefit at its original level.

The Department has considered these comments and although we discourage States from requiring additional verification or making changes at all, we cannot forbid States from requiring additional verification when they receive unclear information. If the verification provided is insufficient to meet program guidelines, we encourage States to maintain the benefit level throughout the transitional period. The State agency should inform the participant of the verification that is necessary to make changes in their benefit level. Additionally, action on changes reported to other programs is an option. Most States that are currently providing transitional benefits are not acting on these changes and prefer to provide a frozen benefit.

Commenters asked that the final rule clarify that the transitional benefit level be adjusted for the automatic annual changes in the food stamp benefit rules. These statutory adjustments are programmed into most States' computers once each year and do not depend on the household providing any information. These commenters noted that USDA has required States that have implemented the transitional food stamp provision to make these adjustments. Therefore, they are asking the Department to incorporate this requirement into the final rule.

The primary automatic annual changes are the Cost of Living Adjustment for the Thrifty Food Plan and the cap on the excess shelter cost deduction. State agencies who are currently participating in the transitional benefit program are dealing with this adjustment in a variety of ways. While some States make the adjustment because it is automatically programmed into their system, others are providing a frozen benefit that does not account for any changes in circumstances. Because of the variety of methods utilized by State agencies in the implementation of this benefit, the final rule includes this as an option but not a requirement. The number of participants affected by a potential cost of living adjustment is so small that the burden of this proposed requirement would most likely outweigh its benefit.

5. Impact on the Household's Certification Period

The Department proposed to remove the prohibition on extending the household's certification period beyond the maximum period 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 5 months in order to provide the household with up to a full 5 months of transitional benefits. 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.

The Department proposed to amend the current regulations to allow State agencies the option of shortening the household's certification period and assign the household a new certification period that conforms with the transitional period. All recertification requirements that would normally apply when the household's certification period has ended would be postponed to the end of the new certification period. The State agency would not have to issue a NOAA 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. Commenters suggested revising 7 CFR 273.10(f)(4) to reflect the policy in the proposed 7 CFR 273.12(f)(4)(iv). The Department has considered this comment and made the necessary amendments to provide consistency in the final rule.

6. Applying for Recertification During the Transitional Period

Section 4115 provides the household with the option of applying for recertification at anytime 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 the transitional benefits, assign the household a new certification period and begin issuing new benefits to the household. The Department, in its proposed revision of 7 CFR 273.12(f)(4), proposed to add a new 7 CFR 273.12(f)(4)(v) to include the provision that a household may apply for recertification at any time during the transitional period.

The Department proposed therein a procedural scheme for the State agency to observe when a household submits a request for recertification prior to the last month of its transitional benefit period. The procedural scheme would have required the State agency to schedule an interview, provide the household with a notice of required verification, and give them 10 days to provide verification. Should the household fail to comply with these requirements or be ineligible for participation, the State agency would deny the application and continue the household's transitional benefits until the end of the period. Should the household be eligible, the new certification period would begin the first day of the month following the month in which the household submitted the application. Should the new benefit amount be lower than the transitional benefit amount, the State agency would be required to encourage the household to withdraw the application.

While some commenters supported the proposed procedures, especially since its provision were favorable to households whose benefits would be reduced or terminated after the end of the transitional period, several offered criticism and proposed changes.

Commenters noted that proposed 7 CFR 273.12(f)(4)(v) mentions a few parts of the general application processing regulation at 7 CFR 273.2, but not all of it. The commenters believe that some State agencies may infer that the other parts of 7 CFR 273.2 do not apply. Therefore, they asked that the final rule state that except as otherwise specified, the provisions of 7 CFR 273.2 should apply to reapplication during the transitional benefit period. The final rule provides references to the paragraphs of 7 CFR 273.2 that are applicable to the general recertification process. It would be too cumbersome to include either a reference to all of 7 CFR 273.2 or a list of those paragraphs that do or do not specifically apply. Therefore, the Department adopts this amendment as proposed.

The proposed rule stated that if the household chooses not to withdraw an application filed during the transitional benefit period that results in a lower benefit amount, the State agency must complete the recertification process and issue the lower benefit effective the first month of the new certification period. Commenters asked that the final rule provide that if the household chooses to not to withdraw their application but instead to receive the lower benefit amount, the transitional benefit amount is the correct amount for the first month of the new certification period, there shall be no over-issuance, and the new benefit amount will be effective the following month.

The Department has considered these comments. The modification recommended by the commenters is inconsistent with the procedures followed for an application that results in an increase in benefits. An application that results in an increase in benefits is effective the first month of the new certification period, and if the State agency has already issued the transitional benefit they need to issue a supplement. The procedure proposed by the Department provides participants and administrators with a clean break, and is a consistent policy for applicants whose benefit amount either increases or decreases. The Department is seeking to simplify the administration of the program. Providing two different standards for applications filed during the transitional benefit period is too complex and does not adhere to the goal of simplification. Therefore, the final rule does not include this suggested modification.

Instead, the final rule provides State agencies with an alternative to issuing a lower benefit amount. This alternative, which was proposed by a commenter, provides State agencies with the option to deny an application and allow the transitional benefit period to run its course if the benefit amount decreases when a household recertifies. If a State agency incorporates this option into their State plan, they would avoid having to collect overpayments made to households who were already issued their transitional benefit for the first month of their new certification period. Just as a State agency needs to issue a household a supplement, if the benefit amount decreases the household may be subject to an overpayment. This is why the Department is encouraging State agencies to implement an alternative such as denying these applications. If a State agency elects to adopt this option, they must state this in their State plan of operation.

One commenter pointed out that if an application for recertification is made toward the end of the month, this would require a decrease in benefits without advanced notice. They asked that either States be allowed to follow current notice requirements or the Department should establish quality control protections for State agencies. The Department agrees with the commenter that, depending on the timing of the recertification application, the State agency may or may not be able to provide the household with advance notice of their decrease in benefits. However, under the current rules, a NOAA is required for changes made during the certification period. Because this change will initiate a new certification period, there is no requirement for the State to issue a NOAA. The Department will not amend the current regulations to accommodate this comment and adopts the applicable language as proposed.

The proposed rule would have required that applications for recertification submitted in the final month of the transitional period to be processed in accordance with current regulations at 7 CFR 273.14. Comments related to this provision are discussed below.

7. Households Who Return to TANF During the Transitional Period

The Department proposed that when a household returns to TANF during the transitional benefit period, the State agency would 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 would 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 would 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 NOAA rather than a notice of expiration, which the State agency may issue when the household reaches the end of its transitional period. To eliminate the delay associated with issuing a NOAA 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 proposed that the State agency be required to include in the transition notice a statement to the effect that if the household reaches the end of its transitional period, the State agency would either reevaluate the household's food stamp case or shorten the household's certification period and require it to undergo a recertification.

Commenters asked the Department to establish a process to allow for joint TANF-Food Stamp applications for families who reapply for both programs. They recommended a 30-day processing standard to ensure that these applications are processed together, noting that allowing a 30-day standard provides simplicity. The Department has considered this recommendation. We agree. Therefore, the final rule includes a provision for implementing a 30-day processing standard for households re-applying for TANF before the end of their transition period.

Commenters believed that the proposed rule did not provide adequate guidance to States on what procedures to use when a household reapplies for TANF during its transitional benefit period. They pointed out that many of the States that had implemented the transitional benefit program by late 2003 reported that a substantial number of the households that receive transitional benefits reapply for TANF before the expiration of their transitional benefit period. Proposed 7 CFR 273.12(f)(4)(ix) informs State agencies about the procedures they would need to follow if a household receiving transitional benefits returns to TANF during the transitional period. Therefore, the Department does not agree with this comment and adopts the language as proposed.

Commenters suggested that the final regulation delete the requirement that States must first approve a TANF application and then seek more information from the family to redetermine food stamp eligibility and benefit levels. Instead, they want the Department to establish a process that allows food stamp households to shift from the transitional period back to the regular program based on a joint TANF-Food Stamp application. One way to do this would be to treat the TANF application as a joint TANF-Food Stamp application and apply the new protections related to food stamp reapplication during a transitional benefit period. As suggested above, the processing time for these applications would be 30 days. The commenters pointed out that households who are reapplying for TANF are likely to have very limited resources so the final regulation should aim to deliver the appropriate benefit amount as quickly and seamlessly as possible.

The Department has considered these comments. However, because the TANF program and the Food Stamp Program are administered by different federal agencies, the Department does not have the authority to regulate the TANF program. However, State agencies may choose to conform their application process so long as they work within the guidelines of each program.

One commenter said that their State continues the transitional benefits even if the household returns to TANF, for payment accuracy. State agencies that proceed in this manner are not implementing transitional benefits properly. The transitional benefit program was intended to be implemented as a benefit that assists families who are making the transition from the TANF program. Households who return to TANF no longer need a transitional benefit because they are no longer in transition from TANF to the workforce, and the State agency now has information about current family circumstances. These households will likely qualify for the regular program. Therefore, the State agency should terminate the transitional case and enroll the household in the traditional Food Stamp Program.

One commenter noted that in their State, the eligibility and payment cycle for TANF is different from the Food Stamp Program. Additionally, the TANF program is operated by private agencies and the Food Stamp Program by public agencies. Therefore, requiring recertification for the food stamp program when a TANF case reopens increases hardship on households because they have to satisfy requirements for both programs and make multiple applications. The commenter believes that the proposed language will create a barrier to continued nutritional assistance.

The transitional program is just that, transitional. It suspends gathering household information when the household has separated from the TANF program. Once the household rejoins the TANF program and new information is gathered, it is appropriate to act on this new information. Therefore, at some point, households will have to recertify for the Food Stamp Program. The final rule allows State agencies the flexibility to develop a transitional benefit program that will work with their State TANF program. The transitional benefit program is an option provided by the Department that may not work in all States due to administrative circumstances such as those noted by this commenter. The Department cannot create a rule that will accommodate all circumstances.

Therefore, States need to work with TANF administrators in their State to develop ways to accommodate Food Stamp Program participants.

One commenter suggested that if a household returns to TANF before the end of the transitional period, the final rule should: (1) Allow the household to continue to receive transitional benefits during the TANF application process; (2) require the household to attend only one interview for the TANF and food stamp application; (3) require the State agency to determine TANF and Food Stamp Program eligibility at the same time; and (4) if the TANF application is accepted, give notice to the household that the transitional benefit period is ended and that the household is eligible for ongoing food stamp benefits. For the reasons stated in the preceding paragraph, the Department cannot impose these requirements on the TANF application process. However, a household is still eligible for the transitional benefit program until they are accepted into the TANF program. Therefore, it is not necessary to amend the proposed language to impose these requirements.

8. Moving Out of the Transitional Period

The Department proposed 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 would be able to 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). Alternatively, in accordance with Section 4115, the State agency would be able to recertify the household in accordance with 7 CFR 273.14. Under the second option, the State agency would be able to shorten the household's prior certification period in order to recertify the household. In shortening the certification period, the State agency would be required to send the household a notice of expiration in accordance with 7 CFR 273.14(b). The Department does not believe that a NOAA is necessary to shorten the certification period because Section 4115 authorizes State agencies to shorten a household's certification period in the final month of the transitional benefit period.

Commenters noted that for the transitional benefit program to fully realize its purpose as a transitional benefit, the households that remain eligible for food stamps after the transitional period will have to stay connected to the regular Food Stamp Program. They believed that the proposed rule would have treated the end of the transitional period the same as the end of any other certification period. They encouraged the Department to adopt final rule language that would require States to provide more complete information that will encourage families to reapply for food stamps and stay connected to the program.

Commenters asked that the final rule require State agencies to issue notices that explicitly state that most people leaving cash assistance programs with low earnings remain eligible for food stamps and that there is a high likelihood that complying with recertification requirements will result in a substantial food stamp allotment. The commenters felt that individuals who received transitional Medicaid benefits may become confused and just disregard the notice about the termination of their transitional food stamps because the transitional period is over.

While the Department agrees that this is a valid point, and the Department encourages State agencies to include this information in their notices, it is not appropriate to regulate under this section. The Department believes that the best way to encourage the successful utilization of this option is to afford States broad latitude on how to implement the option. Moreover, this final rule details six items that must be included in the notice and the Department is not receptive to adding further detail. The Department adopts this amendment as proposed.

In a recent review of notices utilized by current State agencies who offer transitional benefits, the Department discovered that most State agencies provide information that goes beyond the regulatory requirements. For example, most States include information in the initial notice about the need to reapply toward the end of the transitional period in order to continue receiving food stamp benefits. Arizona, Oregon and Pennsylvania provided the Department with copies of fact sheets that they have created for the program. These facts sheets are in plain language and provide participants with a general understanding of the program and the requirements for participation. Finally, New York and Massachusetts provided the Department with copies of transitional benefit notices that include information about other programs, including transitional child care. The Department has provided copies of these notices to State agencies to utilize if they decide to implement this option.

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 amendments to 7 CFR 273.4(a)(6)(ii)(H), 7 CFR 273.8(b), and 7 CFR 273.9(d)(1) were to be implemented October 1, 2002. These provisions restored food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry, extended the higher resource limit to households with a disabled member, and replaced the current, fixed standard deduction with a deduction that varies according to household size. The amendments to 7 CFR 273.4(a)(6)(ii)(B) through (a)(6)(ii)(F) and 273.4(a)(6)(iii) were to be implemented on April 1, 2003. These provisions restored 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. The amendments to, 7 CFR 273.4(a)(6)(ii)(J), and 7 CFR 273.4(c)(3)(vi) were to be implemented on October 1, 2003. These provisions restored food stamp eligibility to qualified aliens who are otherwise eligible and who are under 18 regardless of date of entry and the provisions eliminating the sponsor deeming requirements for immigrant children. State agencies must implement the provisions of 7 CFR 273.4(c)(2)(v), 7 CFR 273.4(c)(3)(iv), 7 CFR 273.4(c)(3)(vii), 7 CFR 273.9(b)(1)(vii), and 7 CFR 273.9(c)(3)(ii)(A) no later than August 1, 2010: State agencies may implement all other amendments on or after the effective date of this rule. States that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

DISTRIBUTION TABLE—THE TRANSITIONAL BENEFITS ALTERNATIVE

CFR	Proposed rule	Final rule
		General eligibility guidelines.
273.12(f)(4)	273.12(f)(4)(i)	273.26.
	273.12(f)(4)(i)(A)	273.26(a).
	273.12(f)(4)(i)(B)	273.26(b).
	273.12(f)(4)(i)(C)	273.26(c).
	273.12(f)(4)(i)(C)(*1*)	273.26(c)(1).
	273.12(f)(4)(i)(C)(*2*)	273.26(c)(2).
	273.12(f)(4)(i)(C)(*3*)	273.26(c)(3).
	273.12(f)(4)(i)(C)(*4*)	273.26(c)(4).
	273.12(f)(4)(i)(C)(*5*)	273.26(c)(5).
	273.12(f)(4)(i)(C)(*6*)	273.26(c)(6).
	273.12(f)(4)(i)(C)(*7*)	273.26(c)(7).
	273.12(f)(4)(i)(C)(*8*)	273.26(d)(1).
	273.12(f)(4)(i)(C)(*9*)	273.26(c)(8).
	273.12(f)(4)(i)(C)(*10*)	273.26(c)(9).
	273.12(f)(4)(i)(C)(*11*)	273.26(d)(2).
	273.12(f)(4)(i)(C)(*12*)	273.26(d)(3).
	273.12(f)(4)(i)(C)(*13*)	273.26(c)(10).
273.12(f)(4)	273.12(f)(4)(ii)	Need to be added as 273.26(e).
		General administrative guidelines.
273.12(f)(4)(i)	273.12(f)(4)(iii)	273.27(a).
	273.12(f)(4)(iii)	273.27(a)(1).
	273.12(f)(4)(iii)	273.27(a)(2).
	273.12(f)(4)(iv)	273.27(c).
		Application for Food Stamp Program recertification.
273.12(f)(4)(ii)	273.12(f)(4)(v)	273.28.
	273.12(f)(4)(v)(A)	273.28(a).
	273.12(f)(4)(v)(B)	273.28(b).
	273.12(f)(4)(v)(C)	273.28(c).
	273.12(f)(4)(v)(C)	273.28(c)(1).
	273.12(f)(4)(v)(C)	273.28(c)(2).
273.12(f)(4)(iii)	273.12(f)(4)(v)(C)	273.28(d).
	273.12(f)(4)(v)(D)	273.28(e).
	273.12(f)(4)(v)(E)	273.28(f).
	273.12(f)(4)(v)(F)	273.28(g).
	273.12(f)(4)(v)(G)	273.28(h).
		Transitional notice requirements.
273.12(f)(4)(iv)	273.12(f)(4)(vi)	273.29.
	273.12(f)(4)(vi)(A)	273.29(a).
	273.12(f)(4)(vi)(B)	273.29(b).
	273.12(f)(4)(vi)(C)	273.29(c).
	273.12(f)(4)(vi)(D)	273.29(d).
	273.12(f)(4)(vi)(E)	273.29(e).
	273.12(f)(4)(vi)(F)	273.29(f).
		Transitional benefits alternative change reporting requirements.
	273.12(f)(4)(vii)	273.30.
		Closing the transitional period.
	273.12(f)(4)(viii)	273.31.
	273.12(f)(4)(viii)(A)	273.31(a).
	273.12(f)(4)(viii)(B)	273.31(b).
	....	Households who return to TANF during the transitional period.
	273.12(f)(4)(ix)	273.32.

Executive Order 12866

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

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis: This action is required to implement provisions of FSRIA (Pub. L. 107–171), which was enacted on May 13, 2002. This rulemaking amends FSP regulations to implement 11 provisions of FSRIA that establish new eligibility and certification requirements for the receipt of food stamps. The Department has estimated the total FSP costs to the Government of the FSRIA provisions implemented in the final rule as $2.669 billion in FY 2010 and $13.541 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the

Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary for the Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local human services agencies will be the most affected to the extent that they administer the Food Stamp Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates 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, the Department 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 the Department 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) that impose costs on State, local, or tribal governments or to 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 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

Before drafting this rule, we received input from State agencies at various times. Because the Program is a State-administered, federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other Program rules. In addition, FNS 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 State agencies that deliver food stamp services. These questions have helped us make the rule responsive to concerns presented by State agencies. Finally, we solicited comments on these amendments through the rulemaking process. The comment period for the Proposed Rule opened on April 16, 2004 and closed on June 15, 2004. The comments on the Proposed Rule from State officials were carefully considered in drafting this final rule. This preamble discusses in detail the nature of the concerns of the State and local officials who commented on the Proposed Rule, our position supporting the need to issue this final rule, and the extent to which the concerns expressed by the State and local officials have been met.

Nature of Concerns and the Need To Issue This Rule

Results of the consultations that were held prior to the publication of the Proposed Rule were discussed in the preamble of that rule and therefore will not be discussed here. The comments that FNS received in response to the Proposed Rule are discussed at length later in this preamble.

Extent to Which We Met Those Concerns

FNS considered comments on the Proposed Rule prior to publishing this final rulemaking. Our responses to these comments are discussed at length later in this preamble.

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 that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this 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 liabilities) or 7 CFR Part 283 (for rules related to quality control 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 279.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes that are required to be implemented by law have been implemented. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, sex, religion, age, disability, marital or family status (FSP nondiscrimination policy can be found at 7 CFR 272.6(a)). 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

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part

1320) requires that each Federal agency establish a process to evaluate proposed collections of information and to reduce information collection burdens on the public. The Office of Management and Budget (OMB) must approve all collections of information by a Federal agency from the public before they can be implemented, and respondents are not required to respond to any information collection unless it displays a current valid OMB control number.

This final rule changes the information collection burden associated with currently-approved collections OMB No. 0584–0064, No. 0584–0496, and No. 0584–0083. Implementation of the data collection requirements resulting from this final rule is contingent upon OMB approval under the Paperwork Reduction Act of 1995.

FNS sought public comments specific to the estimated information collection burden of the proposed rule and received one comment. The commenter suggested that FNS should consider using a checklist for revisions to the State Plan as means of reducing the State agency paperwork burden related to revision of State plans. Because the comment did not impact the burden on the respondents or concern the substantive provisions of this rule, we are deferring a decision of the suggestion and will consider it when we revise State plan requirements. Thus, the provisions contained in this final rule do not differ with regard to information collection burden requirements from those set forth in the proposed rule.

The calculation of the information collection burden under the specific OMB numbers, as revised to reflect adjustments for SNAP participation increases and changes contained in this final rule, are described below. These calculations have been revised to reflect changes in the reporting and recordkeeping burdens resulting from new provisions added to the SNAP regulations by this final rule. As a result of this rulemaking, the overall information collection burden hours associated with OMB No. 0584–0064, No. 0584–0496, and No. 0584–0083 are estimated to have decreased by about 1,150,423 hours annually (920,338 hours due to program changes and 230,085 hours due to adjustments). Of the total impact, the annual burden hours are estimated to have decreased by 653,958 hours for food stamp households (523,166 hours due to program changes and 130,792 due to adjustments) and by 496,465 hours for States (397,172 hours due to program changes and 99,293 for adjustments). The breakdown of the changes for each separate information collection burden is described separately below.

OMB Number: 0584–0064

Title: Application and Certification of Food Stamp Households.

Expiration Date: December 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7, Part 273 of the 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.

Simplified Reporting (7 CFR 273.12(a)(5)):

The expanded use of simplified reporting allowed under FSRIA will greatly reduce reporting burdens for households and State agencies. To the extent that State agencies adopt simplified reporting, households will have fewer reports to file and the agency will have fewer reports to process.

Household burden: The expanded use of simplified reporting allowed under FSRIA reduces the household reporting burden by reducing the number of reports certain households must file with the food stamp agency as a condition of their ongoing eligibility for benefits.

Based on a 2008 survey of State choices and program data from the National Data Bank, out of 53 State agencies, 50 State agencies have implemented simplified reporting. From this, we estimate that 3,940,307 households are newly subject to the expanded simplified reporting option. Of these households, we assume that without simplified reporting 265,577 would otherwise have been subject to quarterly reporting, and 3,674,730 would have been subject to change reporting requirements. We estimate that it takes a household 8 minutes or .1336 burden hours to complete a semi-annual report under simplified reporting or a quarterly report and 5 minutes or .0835 burden hours to complete a change report. We expect households to submit one report annually under simplified semi-annual reporting; 3 reports annually under quarterly reporting; and an average of 3.5 reports annually under change reporting. Based on these estimates, households subject to the simplified semi-annual report have a burden of 526,425 hours (3,940,307 semi-annual reporting households × 1 report × .1336 hours = 526,425 hours). Under quarterly or change reporting, we estimate that these households would have had a burden of 1,180,383 hours [(265,577 quarterly reporting households × 3 reports × .1336 hours = 106,443 hours) + (3,674,730 change reporting households × 3.5 reports × .0835 hours = 1,073,940 hours) = 1,180,383 hours]. The difference indicates a net decrease in expected household burden hours of 653,958 hours (526,425 − 1,180,383 = −653,958 hours).

State agency burden: The expanded use of simplified reporting also reduces the State burden for processing reports. With the exception of households consisting entirely of elderly or disabled persons, which may be subject to a reporting requirement at an interval of up to 12 months, simplified reporting typically requires a household to file a report once every 6 months, and also at any time that the household's gross income exceeds 130 percent of the poverty level. This means that States choosing the simplified reporting option will have fewer household reports to process. Consistent with the analysis of household burden, we estimate that 3,940,307 households are newly subject to the expanded simplified reporting option; 265,577 of which would otherwise have been subject to quarterly reporting, and 3,674,730 of which would have been subject to change reporting requirements. Under semi-annual reporting, all of these households will submit one report annually. We estimate that a State agency spends 11 minutes or .1837 hours processing each report for a total of 723,834 burden hours (3,940,307 reports × .1837 hours = 723,834 hours). Quarterly reporting households submit 3 reports annually and change reporting households submit an estimated average of 3.5 reports annually. We estimate that the State agency spends 11 minutes or .1837 hours processing each quarterly report and 5 minutes or .0835 hours processing each change report. If simplified reporting households continued instead to submit change or quarterly reports, the State agency would have a burden of 1,220,299 hours [(265,577 quarterly reporting households × 3 reports × .1837 hours = 146,359 hours) + (3,674,730 change reporting households × 3.5 reports × .0835 hours = 1,073,940 hours) = 1,220,299 hours]. As a result, the simplified reporting option results in an estimated net reduction of 496,465 burden hours (723,834 hours − 1,220,299 hours = −496,465 hours) for State agencies implementing the option contained in the final rule.

Transition Notices, Application Revisions Reflecting the Deduction Freeze During the Certification Period, and Simplifying Child Support Payments (7 CFR 273.29):

There are small increases in the information collection burden expected to result from the final rule's requirements to develop transition notices, to notify households about freezing deductions during the certification period, and to simplify the determination of child support payments. These provisions are estimated to have resulted in a one-time increase in the burden for State agencies of 300 hours. There is also a small one-time increase in the burden associated with including information in the State plans related to which of the rule's optional provisions States adopt. This provision is expected to increase the overall burden by 50 hours as States amend their Plans of Operation after the final rule becomes effective. In addition, a small one-time increase in the burden already occurred in 2003 from the FSRIA's requirement that States post food stamp applications on State Web sites. We anticipate no further burden from this requirement.

Determination of child support payments. (7 CFR 273.12(a)(1)(vi)):

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. As a result of this change, the household would not have further reporting and verification requirements.

State agency burden: This provision was intended to simplify the process by allowing State agencies to rely solely on information from the Child Support Enforcement (CSE) agency in determining the amount of child support payments made. If a State agency uses CSE data, it will not have to perform other verification of payments reported by the household. Most States already have a link to the CSE agency, and would experience 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 5 State agencies in each of the next 3 years will choose this option, resulting in a total of 100 burden hours annually (5 States × 20 hours = 100 hours).

Household burden: This provision will also reduce the reporting burden for some 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 or .3173 hours in total completing an application for initial certification or recertification. Since only 1.5 percent of all SNAP households received the child support deduction in FY 2008 and only some of those households 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 by this change. 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 (7 CFR 273.12(b)(1), 273.12 (b)(2), and 273.12(h)(2)): States are given the option in FSRIA to postpone acting on changes that would affect the amount of deductions, except for changes in shelter expenses due to a change in residence and changes in earned income. If the State adopts 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 assume that 5 States in each of the next 3 years will choose this option, resulting in a burden of 100 hours annually (5 States × 20 hours = 100 hours).

Household burden: This provision does not affect the burden for households.

Transition notice (7 CFR 273.29):

FSRIA amended the Act to provide for an option for States to provide transitional benefits to families leaving the TANF program. The Act amended and expanded the transitional benefit alternative provided pursuant to the regulatory authority. Current regulations require that States opting to provide transitional benefits provide a Transition Notice (TN) to households. The final rule also provides for a TN but has substantially different requirements for the notice. State agencies that opt to provide transitional benefits must provide families eligible for transitional benefits a TN that includes detailed and specific information about the household's transitional benefits and rights.

State agency burden: The Notice of Expiration (NOE) and the TN are comparable notices, and the TN will replace the NOE in some cases. Therefore, we assume that the burden for the TN will be minimal and will be incorporated into the NOE burden calculations. Because of the substantial changes to the current TN that are required by this provision, we anticipate a burden of 20 hours per State agency for developing the TN for both States that currently provide transitional benefits pursuant to the regulatory authority and those States that have not yet provided transitional benefits. As of August 2008, 18 States have chosen to implement the transitional benefit option. FNS calculated an average annual burden of 120 hours each year (6 × 20 hours = 120 hours) based on 6 States adopting this option each year over a 3 year period.

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

Food Stamp applications on State Web sites (7 CFR 273.2(c)):

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

State agency burden: Because States already develop applications, and all States already maintain Web sites, FNS does not project any additional ongoing reporting burden resulting from this requirement.

Household burden: This requirement simply makes the application available in another manner and does not impose an additional burden for households.

Start-up burden: The startup burden resulting from this requirement has already been incurred by State agencies. FNS estimates that each State agency has previously incurred a one-time burden of 1.5 hours to post its application(s) on the Web resulting in a total burden of 80 hours (53 State agencies × 1.5 hours = 80 hours). There is no ongoing burden from this requirement.

This rule does not affect the current recordkeeping burden involved with OMB# 0584–0064.

OMB Number: 0584–0496

Title: State Agency Options.

Expiration Date: October 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7, Part 273 of the 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.

Establishing and reviewing standard utility allowances (7 CFR 273.9(d)(6)(iii)(B)):

Section 273.9(d)(6)(iii)(B) of the food stamp regulations allows State agencies to establish standard utility allowances (SUAs) and requires State agencies to review and adjust established 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, utility companies or other sources. State agencies may make adjustments based on cost-of-living increases. The information is 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 standard amounts and methodologies to FNS when they are developed or changed.

Estimates of burden: Currently 52 State agencies out of 53 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 each year to determine if cost of living increases are needed. We estimate a minimum of 2.5 hours annually to review and adjust the standards (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 the use of an SUA 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 must draw a sample of cases to obtain it.

Estimates of burden: Currently, 40 State agencies have elected to mandate the use of SUAs. We 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 establish the SUA. Therefore, since there is no additional burden, the total annual burden associated with mandatory utility standards is zero.

Self-employment costs (7 CFR 273.11(b)):

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.

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 or .1169 hours per year for the 53 State agencies to equal a total of 6 burden hours annually (53 × .1169 hours = 6 hours annual burden).

OMB Number: 0584–0083

Title: Operating Guidelines, Forms and Waivers.

Expiration Date: October 31, 2010.

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 amends Part 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.

Estimates of Burden: Out of 53 State agencies, 50 States have adopted simplified reporting; 18 states have adopted transitional benefits; 43 States have adopted simplified definition of income; 36 States have adopted simplified definition of resources; 27 States have adopted the homeless household deduction; 8 States have adopted the option to simplify determination of deductions; and 14 states have chosen to treat legally obligated child support payments made to non-household members as an income exclusion while 39 States will continue to count the payments as a deduction. In view of the number of States that have already selected the above options, we estimate that very few additional States will elect to adopt them in the future and that the additional reporting burden resulting from revising State plans will be minimal. 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 collection is 40 hours (53 respondents (State agencies) X 3 responses per year per respondent X .25 hours per response). There is no impact on the recordkeeping burden involved with OMB# 0584–0083.

An Information Collection Request (ICR) package will be submitted to OMB based on the provisions of this final rule to reflect the changes to OMB No. 0584–0064, No. 0584–0496, No. 0584–0083. These amended information collection requirements will not become effective until approved by OMB. When these information collection requirements have been approved, FNS will publish separate action in the **Federal Register** announcing OMB's approval.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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 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. Section 272.1 is amended by adding a new paragraph (g)(173) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(173) *Amendment No. 401.* The provisions of Amendment No. 401 are implemented as follows:

(i) The following amendments were to be implemented October 1, 2002: 7 CFR 273.4(a)(6)(ii)(H), 7 CFR 273.8(b), and 7 CFR 273.9(d)(1).

(ii) The following amendments were to be implemented April 1, 2003: 7 CFR 273.4(a)(6)(ii)(B) through 7 CFR 273.4(a)(6)(ii)(F) and 273.4(a)(6)(iii).

(iii) The following amendments were to be implemented October 1, 2003: 7 CFR 273.4 (a)(6)(ii)(J); 7 CFR 273.4(c)(3)(vi).

(iv) State agencies must implement the following amendments no later than August 1, 2010: 7 CFR 273.4(c)(2)(v), 7 CFR 273.4(c)(3)(iv), 7 CFR 273.4(c)(3)(vii), 7 CFR 273.9(b)(1)(vi), and 7 CFR 273.9(c)(3)(ii)(A).

(v) State agencies may implement all other amendments on or after the effective date.

(vi) State agencies that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

■ 3. Section 272.2 is amended by adding a new paragraph (d)(1)(xvi) 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 273.26 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

■ 4. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 5. Designate §§ 273.1 and 273.2 as Subpart A of part 273 and add a subpart heading to read as follows:

Subpart A—General Rules

■ 6. 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 four new sentences after the third sentence.

■ c. Paragraph (f)(2)(iii) is removed.

■ d. A new paragraph (f)(4)(v) is added.

■ e. Paragraph (f)(8)(i)(A) is revised.

The additions and revision 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, Public Law 93–112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 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 use information provided by that agency in determining a household's legal obligation to pay child support, the amount of its obligation and amount the household has actually paid. A household would not have to provide additional verification unless it disagrees with the data presented by the State CSE agency. 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 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. * * *

* * * * *

(4) * * *

(v) *Homeless households.* Homeless households claiming actual shelter expenses or those with extremely low shelter costs may provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

* * * * *

(8) * * *

(i) * * *

(A) At recertification the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50. Previously unreported medical expenses, actual utility expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income if the source has not changed and if the amount is unchanged or has changed by $50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. For households eligible for the child support deduction or exclusion, the State agency may use 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. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to use 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. For all other households eligible for the child support deduction or exclusion, the State agency shall require the household to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

* * * * *

■ 7. Designate §§ 273.3 and 273.4 as Subpart B of part 273 and add a subpart heading to read as follows:

Subpart B—Residency and Citizenship

■ 8. In § 273.4:

■ a. Paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(6) and (a)(7) respectively.

■ b. A new paragraph (a)(5) is added.

■ c. Newly redesignated paragraph (a)(6) is revised.

■ d. Newly redesignated paragraph (a)(7) is amended by removing the words "and (a)(5)(ii)(H) through (a)(5)(ii)(J)" and adding in their place "and (a)(6)(ii)(I)."

■ e. Paragraph (c)(2) introductory text is amended by removing the words "paragraph (a)(5)(ii)(A)" and adding in their place "paragraph (a)(6)(ii)(A)".

■ 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 three 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.

■ i. A new paragraph (c)(3)(vii) is added.

The revision and additions read as follows:

§ 273.4 Citizenship and alien status.

(a) * * *

(5) An individual who is:

(i) An alien who has been subjected to a severe form of trafficking in persons and who is certified by the Department of Health and Human Services, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(ii) An alien who has been subjected to a severe form of trafficking in persons and who is under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(iii) The spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(iv) The spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(6) An individual who is both a qualified alien as defined in paragraph (a)(6)(i) of this section and an eligible alien as defined in paragraph (a)(6)(ii) or (a)(6)(iii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) 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;

(F) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) An alien who has been battered or subjected to extreme cruelty in the U.S. 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; [2] or

(H) An alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(6)(i) of this section, is eligible to receive food stamps and is not subject to the requirement to be in qualified status for 5 years as set forth in paragraph (a)(6)(iii) of this section, if such individual meets at least one of the criteria of this paragraph (a)(6)(ii):

(A) An alien age 18 or older lawfully admitted for permanent residence under

[2] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published at 62 FR 61344 on November 17, 1997.

the INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(*1*) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(*2*) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total;

(B) An alien admitted as a refugee under section 207 of the INA;

(C) An alien granted asylum under section 208 of the INA;

(D) 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;

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(F) An Amerasian admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461;

(G) An alien with one of the following military connections:

(*1*) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(*2*) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(*3*) The spouse and unmarried dependent children of a person described in paragraphs (a)(6)(ii)(G)(*1*) or (a)(6)(ii)(G)(*2*) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(6)(ii)(G)(*3*) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(6)(ii)(G)(*3*), child means the legally adopted or biological child of the person described in paragraph (a)(6)(ii)(G)(*1*) or (a)(6)(ii)(G)(*2*) of this section.

(H) An individual who is receiving benefits or assistance for blindness or disability (as specified in § 271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who is under 18 years of age.

(iii) The following qualified aliens, as defined in paragraph (a)(6)(i) of this section, must be in a qualified status for 5 years before being eligible to receive food stamps. The 5 years in qualified status may be either consecutive or nonconsecutive. Temporary absences of less than 6 months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than 6 months, the agency shall presume that U.S. residency was interrupted unless the alien presents evidence of his or her intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the United States for 5 years, the agency shall consider all months of residency in the United States, including any months of residency before the interruption:

(A) An alien age 18 or older lawfully admitted for permanent residence under the INA.

(B) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(C) An alien who has been battered or subjected to extreme cruelty in the U.S. 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;

(D) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

(iv) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

* * * * *

(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 or a citizen child of a sponsored alien who is exempt from deeming in accordance with paragraphs (c)(3)(vi) or (c)(3)(vii) 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. The State agency must inform the sponsored alien of the consequences of refusing this determination. * * * 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) A sponsored alien child under 18 years of age of a sponsored alien.

(vii) A citizen child under age 18 of a sponsored alien.

* * * * *

■ 9. Designate §§ 273.5, 273.6, and 273.7 as Subpart C of part 273 and add a subpart heading to read as follows:

Subpart C—Education and Employment

■ 10. Designate §§ 273.8, 273.9, 273.10, and 273.11 as Subpart D of part 273 and add a subpart heading to read as follows:

Subpart D—Eligibility and Benefit Levels

■ 11. Section 273.8 is amended in paragraph (b) after the words "for households including" by adding "one or more disabled members or" and by adding a new paragraph (e)(19) 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 TANF cash assistance, as defined by 45 CFR 260.31 (a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA. Resource exclusions under TANF and Section 1931 programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA shall not be excluded under this paragraph (e)(19). Additionally, licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)(2)(C) or (D)), 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 shall also not be excluded. The term "readily available" applies to resources that the owner can simply withdraw from a financial institution. State agencies may exclude deposits in individual development accounts (IDAs). 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.

* * * * *

■ 12. In § 273.9:

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

■ b. Paragraph (c)(3)(ii) is amended by redesignating paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B) as paragraphs (c)(3)(ii)(B) and (c)(3)(ii)(C), respectively and adding a new paragraph (c)(3)(ii)(A).

■ c. Paragraph (c)(3)(iii), first sentence is amended by removing the reference "paragraph (c)(3)(ii)(B)" and adding in its place the reference "paragraph (c)(3)(ii)(C)".

■ d. A new paragraph (c)(3)(v) is added.

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

■ f. Paragraph (d)(1) is revised.

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

■ h. Paragraph (d)(5) is revised.

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

■ j. Paragraph (d)(6)(i) is amended by revising the first sentence and adding a new sentence at the end of the paragraph.

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

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

■ m. 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 and capitalizing the next word, "The".

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) * * *

(1) * * *

(vi) * * * Earned income from work study programs that are funded under section 20 U.S.C. 1087uu of the Higher Education Act is excluded.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(A) Received under 20 CFR 1087uu. This exemption includes student assistance received under part E of subchapter IV of Chapter 28 of title 20 and part C of subchapter I of chapter 34 of title 42, or under Bureau of Indian Affairs student assistance programs.

* * * * *

(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 SSA for a program funded under Title XIX of the SSA. 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 TANF cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA). 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. The State agency shall not exclude:

(i) Wages or salaries;

(ii) Gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(ii) of this section. Determining monthly income from self-employment must be calculated in accordance with § 273.11(a)(2);

(iii) Benefits under Title I, II, IV, X, XIV or XVI of the SSA, including supplemental security income (SSI) benefits, TANF benefits, and foster care and adoption payments from a government source;.

(iv) Regular payments from a government source. Payments or allowances a household receives from an intermediary that are funded from a government source are considered payments from a government source;

(v) Worker's compensation;

(vi) Child support payments, support or alimony payments made to the household from a nonhousehold member;

(vii) Annuities, pensions, retirement benefits;

(viii) Disability benefits or old age or survivor benefits; and

(ix) Monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under § 273.8(e)(8).

(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 eligibility standard for each household size established under paragraph (a)(2) of this section rounded up 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 eligibility standard for each household size for the 48 States and the District of Columbia established under paragraph (a)(2) of this section rounded up 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) * * * 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 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. * * *

■ 13. 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. The introductory text of paragraph (f) is revised.

■ f. Paragraph (f)(4) is revised.

The revisions and addition read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* 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 an income deduction rather than an income exclusion for legally obligated child support payments in accordance with § 273.9(d)(5), the State agency may budget such payments 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 income exclusion in accordance with § 273.9(c)(17), multiply the excluded earnings used to pay child support by 20 percent 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) *Certification periods.* The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months except to accommodate a household's transitional benefit period and as specified in paragraphs (f)(1) and (f)(2) of this section.

* * * * *

(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 Subpart H, 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 § 273.28(b). 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 but shall specify in the transitional notice required under § 273.29 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.

* * * * *

■ 14. In § 273.11:

■ a. Paragraph (c)(1)(ii) is amended by redesignating paragraphs (c)(1)(ii)(B) and (c)(1)(ii)(C) as paragraphs (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;

* * * * *

■ 15. Designate §§ 273.12, 273.13, and 273.14 as Subpart E of part 273 and add a subpart heading to read as follows:

Subpart E—Continuing Participation

■ 16. In § 273.12:

■ a. The heading is revised;

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

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

■ d. Paragraph (a)(1)(vii) is removed and paragraph (a)(1)(viii) is redesignated as paragraph (a)(1)(vii);

■ 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 four new sentences to the beginning of the paragraph;

■ 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 capitalizing the next word, "During"; and

■ 3. Adding one new sentence after the first sentence.

■ j. A new paragraph (c)(4) is added;

■ k. Paragraph (f)(4) is removed.

The additions and revisions read as follows:

§ 273.12 Reporting requirements.

(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 use 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).

* * * * *

(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.

(ii) *Notification of simplified reporting requirement.* At the initial certification, recertification and when the State agency transfers the households to simplified reporting, the State agency shall provide the household with the following:

(A) A written and oral explanation of how simplified reporting works;

(B) A written and oral explanation of the reporting requirements including:

(*1*) What needs to be reported and verified;

(*2*) When the report is due;

(*3*) How to obtain assistance; and

(*4*) The consequences of failing to file a report.

(C) Special assistance in completing and filing periodic reports to households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(D) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the periodic report.

(iii) *Periodic report.* (A) The State agency may require a household 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, except for households in which all adults are elderly or disabled with no earned income, a household certified for more than 6 months must submit a periodic report at least once every 6 months. Households in which all adults are elderly or disabled with no earned income must not be required to submit periodic reports more frequently than once a year.

(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 and conform to the requirements of paragraph (b)(2) 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)(v) 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) *Processing periodic reports.* In selecting a due date for the periodic report, the State agency must provide itself sufficient time to process reports so that households will receive adequate notice of action on the report in the first month of the new reporting period.

(v) *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). The household shall use the monthly gross income limit for the household size that existed at the time of its most recent certification or recertification, regardless of any subsequent changes in its household size.

(vi) *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).

(vii) *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) For households eligible for the child support exclusion at § 273.9(c)(17) or deduction at § 273.9(d)(5), the State agency may use 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. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to utilize information provided by their State CSE agency in accordance with this paragraph (a)(6) must specify in their State plan of operation that they have selected this option. If the State agency chooses not to utilize information provided by its State CSE agency, the State agency may make reporting child support payments an optional change reporting item in accordance with paragraph (a)(5) of this section. * * *

* * * * *

(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)(5)(ii) of this section, must:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(b) of this chapter;

(iii) Specify the date by which the agency must receive the form;

(iv) Specify the consequences of submitting a late or incomplete form including whether the State agency shall delay payment if the form is not received by a specified date;

(v) Specify the verification the household must submit with the form;

(vi) Inform the household where to call for help in completing the form;

(vii) Include a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(viii) Include a brief description of the Food Stamp Program fraud penalties;

(ix) Include a statement explaining that the State agency will not change certain deductions until the household's next recertification and identify those deductions if the State agency has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of this section;

(x) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (including the statutory citation, the title of the statute, and the fact that providing Social Security numbers is mandatory), the purpose of requiring Social Security numbers, the routine uses for Social Security numbers, and the effect of not providing Social Security numbers. This statement may be on the form itself or included as an attachment to the form.

* * * * *

(c) * * * However, the State agency has the option to disregard a reported change to an established deduction in accordance with paragraph (c)(4) of this section. * * *

* * * * *

(4) *State agency option for processing changes in deductible expenses.* (i) If the household reports a change to an established deduction amount during the first six months of the certification period, other than a change in earnings or residence, that would affect the household's eligibility for, or amount of, the 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 or after the sixth month for households certified for 12 months. When a household reports a change in residence, the State agency must investigate and take action on potential changes in shelter costs arising from this reported change. However, if a household fails to provide information regarding the associated changes in shelter costs within 10 days of the report, the State agency should send a notice to the household that their allotment will be recalculated without the deduction. The notice will make it clear that the household does not need to await its first regular utility or rental payments to contact the food stamp office. Alternative forms of verification can be accepted, if necessary.

(ii) 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.

(iii) 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.

(iv) 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 new deductions, changes in earned income or changes in shelter costs arising from a reported change in residence until the household's next recertification or after the sixth month of a 12-month certification period but must act on those reports in accordance with paragraphs (c)(1) and (c)(2) of this section. When a household reports a change in residence, the State agency must investigate and take action on potential changes in shelter costs arising from this reported change. However, if a household fails to provide information regarding the associated changes in shelter costs within 10 days of the report, the State agency should send a notice to the household that their allotment will be recalculated without the deduction. The notice will make it clear that the household does not need to await its first regular utility or rental payments to contact the food stamp office. Alternative forms of verification can be accepted, if necessary.

(v) 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.

* * * * *

■ 17. Designate §§ 273.15, 273.16, 273.17, 273.18, and 273.19 as Subpart F of part 273 and add a subpart heading to read as follows:

Subpart F—Disqualification and Claims

■ 18. Designate §§ 273.20, 273.21, 273.22, 273.23, 273.24, and 273.25 as Subpart G of part 273 and add a subpart heading to read as follows:

Subpart G—Program Alternatives

■ 19. Add Subpart H to read as follows:

Subpart H—The Transitional Benefits Alternative

Sec.

Subpart H—The Transitional Benefits Alternative

§ 273.26 General eligibility guidelines.

The State agency may elect to provide households leaving TANF with transitional food stamp benefits as provided in this section. 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, the maximum number of months for which transitional benefits will be provided and any other items required to be included under this subpart H. 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;

(c) All household members are ineligible to receive food stamps because they are:

(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) Receiving SSI in a cash-out State in accordance with § 273.20;

(4) Ineligible students in accordance with § 273.5;

(5) Ineligible aliens in accordance with § 273.4;

(6) Disqualified for failing to provide information necessary for making a 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) Disqualified for knowingly transferring resources for the purpose of qualifying or attempting to qualify for the program as provided at § 273.8(h);

(8) Disqualified for receipt of multiple food stamps;

(9) Disqualified for being a fleeing felon in accordance with § 273.11(n); or

(10) Able-bodied adults without dependents who fail to comply with the requirements of § 273.24;

(d) The State agency has the option to exclude households where all household members are ineligible to receive food stamps because they are:

(1) Disqualified 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);

(2) Ineligible for failing to cooperate with child support agencies in accordance with § 273.11(o) and (p); or

(3) Ineligible for being delinquent in court-ordered child support in accordance with § 273.11(q).

(e) The State agency must use procedures at § 273.12(f)(3) to determine the continued eligibility and benefit level of households denied transitional benefits under this section 273.26.

§ 273.27 General administrative guidelines.

(a) 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 transitional period. 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). Before initiating the transitional 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 to account for:

(1) Changes in household circumstances that it learns about from another State or Federal means-tested assistance program in which the household participates; or

(2) Automatic annual changes in the food stamp benefit rules, such as the annual cost of living adjustment.

(b) The State agency must include in its State plan of operation whether it has elected to make these changes:

(1) At the beginning of the transitional period; or

(2) Both at the beginning and during the transitional period.

(c) 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 transitional 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 § 273.29 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.

§ 273.28 Application for Food Stamp Program recertification.

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 in accordance with § 273.2(f).

(c) Households that have met all of the required application procedures shall be notified of their eligibility or ineligibility as soon as possible, but no later than 30 calendar days following the date the application was filed.

(1) If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall continue processing the application while continuing the household's transitional benefits.

(2) If the application process cannot be completed due to State agency fault, the State agency must continue to process the application and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.2(h)(1).

(d) If the application process cannot be completed because the household failed to take a required action, the State agency may deny the application at that time or at the end of the 30 days. If 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 a RFC in accordance with § 273.31;

(e) 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 has the option to deny the application and allow the transitional period to run its course, or complete the recertification process and issue the household the lower benefit amount beginning with the first month of the new certification period.

(f) 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 5-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.

(g) 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.

(h) Applications for recertification submitted in the final month of the transitional period must be processed in accordance with § 273.14.

§ 273.29 Transitional notice requirements.

The State agency must issue a transitional 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, the State agency must, at the end of the transitional period, 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 § 273.27(c), 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 § 273.12(c)(3) 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 § 273.29(e) 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.

§ 273.30 Transitional benefit alternative change reporting requirements.

If the household does report changes in its circumstances during the transitional period, the State agency may make the change effective the month following the last month of the transitional period or invite the household to reapply and be certified to receive benefits. 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. Moreover, the State agency must remove any income, resources and deductible expenses clearly attributable to the departing member.

§ 273.31 Closing the transitional period.

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

(a) Issue the RFC specified in § 273.12(c)(3) and act on any information it has about the household's new circumstances in accordance with § 273.12(c)(3). 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 § 273.27(a); 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).

§ 273.32 Households who return to TANF during the transitional period.

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 § 273.31 to determine the household's continued eligibility and benefits for the Food Stamp Program. This includes processing the application within 30 days. However, for a household assigned a new certification period in accordance with § 273.27(c), the household must be recertified if it returns to TANF during its transitional period.

Dated: January 11, 2010.

Kevin Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: The following attachment will not appear in the Code of Federal Regulations.

Regulatory Impact Analysis—Sections 4101 through 4401

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 amends Food Stamp Program (FSP) regulations to implement 11 provisions of FSRIA that establish new eligibility and certification requirements for the receipt of food stamps. The Department has estimated the total FSP costs to the Government of the FSRIA provisions implemented in the final rule as $2.669 billion in fiscal year (FY) 2010 and $13.541 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

Encouragement of Payment of Child Support—Section 4101

Discussion: 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 non-household member. This provision gives State agencies the option of treating such payments as either an income exclusion or an income deduction. The rule provides that: (1) A household can receive an exclusion or deduction only for legally obligated child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member (vendor payments); (2) no exclusion or deduction is allowed for any amounts the household member is not legally obligated to pay; (3) State agencies may determine what constitutes a legal obligation to pay child support under State law; (4) an exclusion or deduction is allowed for amounts paid toward child support arrearages; (5) if the State agency opts to provide households a deduction for legally obligated child support payments rather than an exclusion, the deduction must be determined before computation of the excess shelter deduction; and (6) State agencies may, in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid, rely solely on information provided through its State's Child

Support Enforcement agency and not require further reporting or verification by the household.

Effect on Low-Income Families: The effect of this provision on low-income families will depend on their State of residence. Families that live in States that choose to treat child support payments as a deduction from income will see no change in their eligibility or benefit. Some families that live in States that elect to exclude child support payments from countable income may become eligible if the exclusion lowers their gross income below 130 percent of the poverty guidelines.

Cost Impact: The cost to the Government of this provision is minimal (less than $1 million) in FY 2010 and over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

To estimate the effect of this provision, we used a micro-simulation model and data from the U.S. Census Bureau's Survey of Income and Program Participation (SIPP) which includes information on household income and expenses. We simulated the impact of excluding all child support payments, rather than deducting these payments, when determining household FSP eligibility and benefit levels. Among current participants, there is no impact; the effect of treating the payment as an income exclusion or as a deduction is the same in the benefit calculation. However, this provision could make some families newly eligible if their gross income is above 130 percent of the poverty guidelines when the child support payment is counted as income and less than 130 percent when the payment is excluded. Some of these newly eligible families may choose to participate in the FSP, potentially increasing program costs. In our analysis, we found a very small number of un-weighted cases in the SIPP data, affected by this provision. Estimates based on so few un-weighted cases are unreliable, but suggests that the number of affected households is minimal. In addition, the cost impact depends on the number of States that elect to exclude, rather than deduct, child support. As of November 2007, only fourteen States had made this election. Therefore, it is estimated that this provision will have a minimal impact on FSP costs.

Participation Impacts: Very few households will be affected by this provision.

Uncertainty: There is a moderate level of uncertainty associated with this estimate. While the estimate is based on a large national dataset, the small number of un-weighted cases affected by this provision introduces substantial uncertainty. However, the small number of affected cases indicates that the cost to the Government of this provision is likely to be small.

Simplified Definition of Income—Section 4102

Discussion: This provision adds three new categories of income that, at the option of the State agency, may be excluded from household income in determining a household's eligibility for FSP and its benefit levels. The three categories of income are:

(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 as well as student financial assistance received under 20 U.S.C. 1087uu of the Higher Education Act; (2) State complementary assistance program payments excluded for the purpose of determining eligibility for Medicaid under section 1931 of the SSA; 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 Medicaid under section 1931. However, the statute provides an extensive list of income types that may not be excluded and gives the Secretary authority to propose other income types that may not be excluded. As a result, the rule provides that a State agency may not exclude the following types of income: 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), X (Grants to States for Aid to the Blind), 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 SSA; wages and salaries; regular payments from a government source (such as unemployment benefits and general assistance); worker's compensation; or legally obligated child support payments made to the household. This rule also allows States to include certain income as earned income if the household is receiving TANF cash assistance or Medicaid.

Discretion was given to USDA to mandate what other types of income could not be excluded by States implementing this option. Of the types of income not explicitly included in the FSRIA, FNS is adding alimony, self-employment income, annuities, and pensions and retirement benefits. FNS could have allowed States to exclude these types of income but decided that they ought to be counted as income because they are very similar to other types of income we count (for example, earnings other than self-employment or child support income).

Effect on Low-Income Families: This provision will reduce reporting burdens and increase benefits for low-income families that have these sources of income to the extent they live in States that take this State option.

Cost Impact: The cost to the Government of this provision is $13 million in FY 2010, and $65 million over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

As stated above, there are three components of this provision. The first excludes education assistance excluded under the SSA Title XIX (Medicaid) and 20 U.S.C. 1087uu of the Higher Education Act. Relatively few current FSP households have income from these sources. Excluding this income would increase total FSP benefits by $12.5 million (0.02 percent of projected benefit costs in fiscal year 2010) if all States adopted the option.

The second component of this estimate is to exclude State Complementary Assistance Programs. Because there is little information on the State programs that fit into this category and the number of people who receive assistance, the provision will have an unknown, but we presume, minimal impact.

The third component is the option to allow States to exclude some types of income excluded in their cash assistance and Medicaid programs. The Congressional Budget Office estimates this provision would cost $2 million a year; USDA has concurred with this estimate.

Each of the estimates shown above represents full-year national costs if all States adopt all options. Since passage of the FSRIA, 29 States have implemented one or more of the options, representing 90.6 percent of total issuance in fiscal year 2006. We therefore take only 90.6 percent of the estimated costs of each provision. Therefore the total impact of this provision is $13 million in FY 2010 and $65 million over the 5 years FY 2010 through FY 2014.

Participation Impacts: We expect minimal effects of these provisions on participation. None of the optional income exclusions are likely to make many more households eligible. Some unknown but small number of current participants will receive somewhat higher benefits.

Uncertainty: There is a moderate level of uncertainty associated with this estimate. While part of the estimate is based on a large national dataset, the small number of un-weighted cases affected by these provisions introduces substantial uncertainty. However, the small number of affected cases indicates that the cost to the Government of this provision is likely to be small.

Alternatives: FNS considered whether or not to allow States to exclude alimony, self-employment income, annuities, and pensions and retirement benefits from household income. The final rule does not allow States to exclude these types of income because they are believed to be very similar to other types of income that are counted.

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 FSP's monthly net income limit for household sizes up to six; (2) for Guam, the standard deduction will be equal to 8.31 percent of twice the FSP's monthly net income limit 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 FSP benefit by allowing them to claim a larger standard deduction and to obtain higher FSP 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 $424 million in FY 2010 and $2.510 billion over the 5 years, FY 2010 through FY 2014. These impacts are already incorporated into the President's 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 (DHHS) and used for FSP eligibility standards. The poverty guidelines used for setting the FY 2010 FSP net income limits were published on January 23, 2009. The poverty threshold values for use in FY 2011 and beyond were calculated by inflating the FY 2010 values by the Consumer Price Index for All Urban Consumers as forecasted in the Office of Management and Budget's economic assumptions. For each household size and for each year, these values were multiplied by 8.31 percent. Comments received on the proposed rule suggested that the result be rounded up to the nearest whole dollar to ensure that no household be given a standard deduction less than 8.31 percent. This comment is incorporated into the final rule. Therefore, beginning in FY 2008, the result was rounded up to the nearest whole dollar. The rounded product was then compared to the current standard deduction value of $134, the higher of which was adopted as the new standard deduction for each household size. (For example, the monthly poverty threshold for a five-person household is $2,149 in FY 2010. Multiplying this value by 8.31 percent and rounding up yields a product of $179, which is larger than the standard deduction value of $134. The new standard deduction value for these households is $179.

EXPECTED DOLLAR INCREASE IN THE FSP STANDARD DEDUCTION BY HOUSEHOLD SIZE AND FISCAL YEARS 2010 THROUGH 2014

Household size	2010	2011	2012	2013	2014
1 person	0	0	0	0	0
2 persons	0	0	0	0	0
3 persons	0	0	0	1	4
4 persons	19	22	25	28	32
5 persons	45	48	52	56	60
6+ persons	71	74	79	83	88

Second, the number of households affected for each household size and in each year was estimated based on participation projections from the President's budget baseline. The projections were adjusted based on data on the proportion of households of each size not receiving the maximum allotment, from *Characteristics of Food Stamp Households: Fiscal Year 2007.* Households already receiving the maximum allotment are excluded because their benefits cannot increase even though the larger standard deduction decreases their net income. [For example, 5.3 percent of all households included five members in 2007, 18.5 percent of which received the maximum benefit. The projected total number of FSP households in 2010 is 15,896,000. Thus, the number of five-person households affected by the provision in FY 2010 was calculated as 15,896,000 households times 5.3 percent (in five-person households) times 81.5 percent (not receiving the maximum benefit)—equal to 687,000 five-person households.]

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 for each household size, the number of households affected, 12 months, and a benefit reduction rate of 39 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 can change the shelter deduction for some households. In 2007, about 60 percent of food stamp households claimed 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 40 percent of food stamp households did not claim a shelter deduction or already receive the maximum shelter deduction allowable. Among these households, the benefit reduction rate is 30 percent. Taking the weighted average of these two groups yields a benefit reduction rate of 39 percent. (For five-person households in FY 2010, the cost of this provision was estimated as a $45 change in the standard deduction ($179–$134), times 687,000 households, times 12 months, times 39 percent—equal to about $144,607 million.)

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

Participation Impacts: While we do not expect this provision to significantly increase FSP 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 2010, households with four or more persons will be affected by this provision. 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 households affected, times the number of persons per households, summed across household sizes. In FY 2010, we expect almost 11.9 million persons to receive an average of $3.57 more per month in food stamp benefits as a result of this provision.

Uncertainty: Because these estimates are largely based on recent quality control data, they have a high level of certainty. To the extent that the distribution of FSP 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.

Alternatives: The proposed rule stated that the methodology for calculating the standard deduction each fiscal year would be based on 8.31 percent of the monthly net income limits for household sizes one through six, rounded to the nearest whole dollar ("regular rounding rules"). Comments received on the proposed rule pointed out, however, that the regular rounding rules could lead to a calculation that is fractionally less than 8.31 percent of the net income limit because the Department would round down in cases where the number of odd cents in the exact figure is less than 50. As a result, the final rule will "round up" all fractional results to ensure that no household is denied a standard deduction at least "equal to" 8.31 percent of the net income limits.

Simplified Utility Allowance—Section 4104

Discussion: This provision simplifies current rules relating to the 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 a 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 a 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: Relative to current regulations, this provision will increase the shelter deduction and raise FSP 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 FSP benefits among low-income households with utility expenses greater than the SUA to the extent that they reside in States that 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 $532 million in FY 2010 and $2.605 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President' budget baseline.

According to individual State SUA plans, there were 11 States with mandatory SUA policies in FY 2002 at the time of enactment. Based on participant data from the National Data Bank, those 11 States contained approximately 25 percent of all food stamp participants in FY 2002. By November 2007, the number of States with mandatory SUA policies had grown to 40. As a result of this provision, roughly 66 percent of FSP participants are now subject to mandatory SUA policies. We consider this provision to be fully implemented by FY 2010 and attribute the increase in States with mandatory SUA policies since FY 2002 to this provision.

The cost impact of this provision includes three components: (1) 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; (2) increased costs due to ending the SUA proration requirements; and (3) increased costs due to extending the full heating and cooling SUA to certain households in public housing with shared utility meters.

The national savings impact of limiting households with high utility expenses to a mandatory SUA was estimated using a micro-simulation model with September 2005 SIPP data and current FSP program rules. This model was used because SIPP contains information on household income and expenses, including the information about household utility expenses necessary to estimate changes in household benefits resulting from changes to their excess shelter expense deduction value. We used this model to substitute the mandatory SUA for actual utility expenses. We estimate that this substitution would reduce total FSP benefits by 0.248 percent. We applied this percentage to the baseline cost projections for each year and adjusted the product to reflect the proportion of FSP participants (40 percent) expected to be made newly subject to a mandatory SUA as a result of this provision.

The national cost impact of ending the proration requirement of the heating and cooling SUA was estimated using quality control data prior to enactment. quality control data includes information on household income and expenses and allows us to identify which households received a prorated SUA. Using this data, we calculated the change in each household's benefit as a result of changing the SUA proration rules and estimated a national increase in benefits of 1.509 percent. This percentage increase was multiplied by the baseline cost projections from the President's 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 FSP participants subject to mandatory SUA policies. As outlined above, we estimate that 66 percent of FSP participants were subject to mandatory SUA policies in FY 2007 and beyond.

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 2010 budget baseline. Based on tabulations of control data prior to enactment, 39.2 percent of households reported positive utility expenses lower than their State's SUA.

These were generally households who were claiming actual utility expenses rather than the SUA when determining their excess shelter expense deduction and were likely to be affected by this provision. Their average utility expenses were estimated at $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 8 percent times 5 percent) 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 FSP participants subject to mandatory SUA policies, approximately 66 percent of participants.

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

Participation Impact: In FY 2010, 384,000 persons are expected to gain an average of $127.92 per month in FSP benefits as a result of this provision. In addition, 35,000 persons are expected to lose an average of $139.30 per month in FSP benefits, including 27,000 persons who will be ineligible in 2010 as a result of this provision and not participate in FSP. 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 and SIPP data 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 2010 budget baseline, 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 choose to adopt this option is quite strong, as it is based on reports from States about their policy choices. However, the estimate on the impact of ending pro-rationing is based on older QC data, because QC data from after enactment of this provision no longer contains the data needed to make this estimate. The most uncertain part of the estimate is the 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, the cost 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 reported 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 FSP households. The rule provides that: (1) The State agency may include any household certified for at least 4 months within a simplified reporting system, except that the state agency may not include households with no earned income in which all adult members are elderly or disabled; (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. FNS is extending Section 4109 to homeless and migrant workers, with the distinctions noted above. FNS is using discretion here to allow States to put a homeless person into a simplified reporting system. Another final rule, the Non-citizen Eligibility, and Certification Provisions (NECP) of Public Law 104–193, as Amended by Public Laws 104–208, 105–33, 105–185 (the NCEP Rule) allowed homeless and migrant workers with earnings to be in a simplified reporting system identical to this provision, so for consistency with previous rulemaking, FNS is extending simplified reporting to homeless persons and migrant workers without earnings. The final rule allows states to act on all changes without seeking a waiver from FNS, which many States had done after passage of the FSRIA.

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, which reduces the 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 2010 is expected to be $336 million. The 5-year total for FY 2010 through FY 2014 is $1.644 million. These impacts are already incorporated into the President's FY 2010 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, not just earners that existed under regulation prior to the FSRIA. In addition, FNS implemented a universal quarterly reporting system via the Anticipating Income and Reporting Changes proposed rule for some time prior to passage of the 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). Combined those 47 States accounted for 90.6 percent of all benefit costs in fiscal year 2006; we assume by extension that they account for 90.6 percent of the cost of simplified reporting: 90.6 percent of the estimate equals $336 million in fiscal year 2010.

Participation Impact: This provision only affects current participants in the States that opt to implement. All households who are placed in this reporting system benefit by reducing the frequency of reports they must submit. FY 2007 quality control data indicate that 28.69 percent of all households are coded as being in simplified reporting and have no earnings. In 2010, this represents 10.033 million people affected by this provision. They will see about $2.79 per month more in benefits because of this provision in fiscal year 2010. 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. Adjustments based on quality control data have a high level of certainty as well. Some uncertainty is introduced, however, with the use of two different data sources and other out-of-model adjustments.

Alternatives: For consistency with prior rulemaking, the final rule permits States to extend the certification periods of certain homeless and migrant workers to allow them to be included in a simplified reporting system. The costs of this alternative are thought to be minimal because relatively few homeless and migrants participate in the program.

Simplified Definition of Resources—Section 4107

Discussion: The provision amends current rules relating to the FSP's resource limit. The provision increases the resource limit for households with a disabled person from $2,000 to $3,000. It also provides State agencies the option to exclude from resource consideration any resources that the State agency excludes when determining eligibility for TANF cash assistance or medical assistance under Section 1931 of the SSA. State agencies that choose this option may not exclude cash, licensed vehicles, or readily available amounts deposited in financial institutions when determining FSP eligibility.

Effect on Low-Income Households: Under previous law, only households with elderly members were able to exclude the first $3,000 of countable resources; all other households were subject to the $2,000 resource limit. The provision to raise the asset limit for households with disabled members will bring these households in line with those with elderly members. Second, the provision permits States to exclude some resources currently counted in the FSP. By exercising this option, States will reduce the resource total for some households. As a result, both provisions will increase the number of low-income families who are eligible for FSP benefits by either reducing the amount of assets that are countable or by raising the resource limit for eligibility. These provisions will have no impact on those currently eligible for food stamps.

Cost Impact: We estimate that the cost to the Government of the provision to raise the asset limit for households with disabled members will be $33 million in FY 2010, and $163 million over the 5 years FY 2010 through FY 2014. The cost to the Government of the provision to allow States to exclude non-vehicle and non-cash assets in accordance with their TANF or Medicaid program rules will be $67 million in FY 2010 and $326 million over the 5-year period. The impacts of both provisions are already incorporated into the President's FY 2010 budget baseline.

The estimate to raise the asset limit to $3,000 for households with disabled members was derived using FY 2007 quality control data. Because the provision was fully implemented in FY 2007, the quality control data already included disabled households made eligible by the reform so we were able to estimate the impact of this provision on eligibility and benefits by simulating the reversal of the reform. In other words, we examined current quality control data to determine the value of benefits issued to households with non-categorically-eligible disabled members who had assets greater than $2,000 but less than $3,000. The simulation model indicated that reversing the provision would reduce benefits by 0.057 percent. The annual cost of raising the asset limit for these households was calculated as (positive) 0.057 percent times the baseline cost projections from the President's budget baseline for each year.

The estimate to allow States to exclude non-cash non-vehicle assets that are excluded from their TANF or Medicaid programs was derived from a micro-simulation model using SIPP data and FY 2009 program rules. We used this model because SIPP is the only national survey with detailed information about assets for a sample of low-income households, and because we were able to generate a large enough sample to generate a credible estimate.

Because the only non-vehicle, non-cash asset that SIPP collects data on is retirement savings, our estimate is based on the impact of excluding IRA and Keogh retirement accounts. We simulated the effect of the new provision by excluding these retirement savings from countable assets, identifying households made newly eligible, and determining the value of benefits that would be issued to those newly eligible likely to participate. The model estimated that excluding retirement savings would increase total benefits by 1.71 percent. However, we made a few adjustments to the model results.

First, our experience with the SIPP model is that it overestimates the participation rate among new eligibles in simulations of expanding eligibility to asset-ineligible households, who are more likely to be elderly or working than other households. Therefore, we adjusted the estimate by half. The second adjustment was to only count the impact among the three States that chose to exclude retirement savings—Illinois, Ohio, and Pennsylvania after this law was implemented but prior to the implementation of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), which excluded retirement savings for all States. The three States accounted for 13.32 percent of benefits issued in FY 2008.

Participation Impact: In FY 2010, 25,000 newly eligible persons living in households with disabled members are expected to participate as a result of the increase in the asset limit. Their average monthly FSP benefit is expected to be $110.46. An additional 31,000 newly eligible persons are expected to participate as a result of the State option to exclude non-vehicle, non-cash assets in fiscal year 2010 with an average monthly FSP benefit of $178.95. Neither provision will have an impact on the benefit size for those who are currently participating.

The participant impact of the provision to raise the asset limit for disabled households was estimated using the same methodology as the cost estimate. The simulation results using quality control data produced an estimated participation drop of 0.072 percent by lowering the asset limit to $2,000 for disabled households. Applying this percentage to the 2010 President's budget baseline yields a decrease of 25,000 participants in 2010. To show the impact of the participation increase, we simply changed the decrease to an increase.

The participant impact of the provision to allow States to use TANF or Medicaid asset rules on FSP participation was estimated using the same methodology as the cost estimate. The simulation results of the SIPP model produced participation impacts for those gaining eligibility. The impacts, measured as the percentage increase in FSP participation in the SIPP database (1.39 percent), were multiplied by the participation projections in the President's FY 2010 budget baseline and were adjusted according to the methodology outlined for the cost estimate.

Uncertainty: There is a small degree of uncertainty associated with the estimate to raise the asset limit for disabled households. The estimate is based on 2007 quality control data. To the extent that asset values are not accurately recorded, this could affect the validity of the result. However, the data are fairly recent and of high quality.

There is a moderate level of uncertainty associated with the estimate to provide States with an option to exclude non-cash and non-vehicle assets that are excluded by States' TANF plans. The estimate is based on a micro-simulation model with SIPP data, and the sample size of newly eligible and participating households and individuals is rather small. Second, the only non-cash, non-vehicle assets that the SIPP data are able to identify are retirement savings; thus these assets are the only ones included in the estimate.

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 5 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 5 months of transitional benefit; (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 the 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 2010 is $191 million, and it costs $975 million over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

This estimate uses data on the number of households receiving transitional benefits in the 2007 quality control data and projects it over the 2010–2014 period using expected FSP participation from the President's FY 2010 budget baseline. We assume that about 48 percent of TANF leavers have earnings and other financial changes that offset the loss of the TANF income and therefore their food stamp benefit is not dramatically different from their pre-transitional benefit amount. Therefore we score the cost of the remaining 52 percent whose FSP benefit is now higher due to the loss of TANF.

We estimate that in FY 2010 there are 49,000 leavers eligible for the transitional benefit. The average food stamp benefit for TANF households in FY 2007 was about $303 a month. However, the statute states that the FSP benefit shall be adjusted due to the loss of TANF cash. The average TANF benefit was $352 a month in FY 2007. A $352 decrease in cash assistance times an expected benefit reduction rate of 0.3250 for households with TANF and earned income produces a $114 increase in FSP benefits. Therefore, we assign a monthly transitional benefit for each leaver household of $417 in 2007. Inflating this benefit based on the change in the Thrifty Food Plan equals a $504 monthly benefit in 2010. 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 5-month traditional benefit period results in four extra months of benefits.

The annual cost is the monthly cost 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 FSP 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 an FSP case normally. Returners in the second through fifth month, however, do generate savings. Data from DHHS 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 multiply the percentage returning times the cost for the year.

Prior to the passage of the FSRIA, some States had been operating a three-month transitional benefit option that FNS allowed via regulation. We therefore reduced the cost further to avoid double counting what is already in the baseline. We assumed these States would move to the 5-month option. The full cost of the three-month option was subtracted from the full cost of the 5-month option to get the cost due to the legislative change.

Finally, we make adjustments for the proportion of States that have taken up the option. In FY 2006, 17 States, which account for about 44 percent of food stamp issuance, adopted a transitional benefit option. Therefore, we take 44 percent of the cost in each year.

Participation Impact: We estimate that in FY 2010, an average of 49,000 TANF leavers will receive the food stamp transitional benefit per month.

Uncertainty: There is a moderate level of uncertainty with this estimate. The estimate is based on 2007 quality control data which is considered timely and reliable. Some uncertainty is introduced, however, from our assumptions about recidivism and the portion of transitional benefit caseload that would have otherwise participated in the FSP in the absence of the transitional benefit.

Restoration of Benefits to Legal Immigrants—Section 4401

Discussion: This provision substantially expands eligibility for the FSP for legal immigrants. It restores eligibility to three groups of legal immigrants in three stages. Effective October 1, 2002, legal immigrants who receive blind or disability benefits became eligible to participate in the FSP. Effective April 1, 2003, legal immigrants who have resided for at least 5 years in the United States as a qualified alien 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 removes sponsor deeming requirements for immigrant children.

Effect on Low-Income Households: These three provisions 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 5 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 FSP eligibility on the basis of receiving blind or disability benefits but 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 5 years benefited from the provision restoring eligibility to children effective October 1, 2003.

Cost Impact: The cost to the Government of all three provisions will be $1.073 billion in FY 2010 and $5.253 billion over the 5-year period of 2010 through 2014. These costs are already incorporated into the President's Budget baseline.

The estimates for the provisions are based on data from the U.S. Census Bureau's SIPP, a large national data set which incorporates features that permit the simulation of changes in eligibility of immigrants in the FSP. The simulation substitutes new rules for determining the eligibility of immigrants, determines the number of households made eligible by the new rules, and calculates the value of benefits that would be issued to those newly eligible who are likely to participate. The simulation estimated that restoring FSP eligibility to legally resident noncitizen disabled, children, and adults with 5 years legal residency would increase program costs by 1.84 percent. The annual cost of this provision was estimated by multiplying this figure by the cost projections in the 2010 President's Budget.

Participation Impact: We estimate that by 2010, an additional 731,000 legal immigrants will be participating in the FSP. Some will be people who would have been 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 participated in the program prior to the implementation of this provision. Participation effects were estimated using the same methodology as the cost estimate. The simulation results produced a participation impact estimate of 2.09 percent. The impact was multiplied by the participation projections for the FY 2010 President's budget baseline.

We estimate that another 701 million individuals already participating will be receiving larger benefits. These are individuals living in already-participating households with newly-eligible immigrants. These are frequently US-born children of newly-eligible noncitizens parents. A relatively small number of individuals will receive lower benefits or become ineligible. These are typically participating children whose noncitizens parents' income is sufficient to reduce the household benefit or make the household ineligible. We estimate that 14,000 participants will receive lower benefits and 532,000 will become ineligible. We estimate that 1.263 million newly-eligible immigrants will participate, for a net participation gain of 731,000.

Uncertainty: The estimates for restoring eligibility to the three groups of legal immigrants have some degree of uncertainty, because they rely on reported information in the SIPP. Because the SIPP does not collect data on immigrant status, the model has to impute immigrant status, based on external data on the size and characteristics of the undocumented immigrant and refugee populations.

Alternatives: The proposed rule interpreted the extension of eligibility to any qualified alien who has resided in the United States for 5 years or more as a qualified alien to include aliens who were not qualified aliens at the time of arrival in the United States but later attained qualified status. As written, Section 4401 of FSRIA could be read to require that the alien be in a qualified status at the time of arrival in the United States. However, in reviewing the legislative history behind FSRIA, the Department concluded that it was not the intent of Congress to deny the benefits of the provision to those who were not qualified aliens at the time of arrival but later obtained the status.

FNS lacks statistics on the number or percent of legal permanent residents who were non-immigrants or undocumented immigrants at the time of arrival in the United States. A large portion of this group is the group of formerly undocumented immigrants granted legal status under the Immigration Reform and Control Act of 1986. Taking the more narrow interpretation of this provision would significantly reduce costs and make many newly-eligible participants ineligible.

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