

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 271, 272, 273, 275, and 277 RIN 0584-AC45

#### Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Food Stamp Provisions of the Balanced Budget Act of 1997

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** On September 3, 1999, the Department published an interim rule (64 FR 48246) to implement, effective November 2, 1999, two food stamp provisions of the Balanced Budget Act of 1997 (the Balanced Budget Act). The two provisions amended the Food Stamp Act of 1977 (the Food Stamp Act) to enhance State flexibility in exempting portions of a State agency's caseload from the food stamp time limit and to increase significantly the funding available to create work opportunities for recipients who are subject to the time limit. Comments were solicited through November 2, 1999.

On December 23, 1999, the Department published a proposed rule (64 FR 72196) to amend Food Stamp Program (FSP) regulations to incorporate the work provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This rule proposed making significant changes to current work rules, including requirements for the Food Stamp Employment and Training (E&T) Program and the optional workfare program, as well as simplifying disqualification requirements for failure to comply with work rules. Comments were solicited through February 22, 2000. This rule finalizes both of those rulemakings.

**EFFECTIVE DATE:** This final rule is effective August 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, 3101 Park Center Drive, Room 810, Alexandria, Virginia, (703) 305-2519.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

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

##### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3105, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

##### Executive Order 12988

This final 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 final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

##### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and recipients who are subject to FSP work requirements. The rulemaking also affects State and local welfare agencies that administer the FSP, to the extent

that they must implement the provisions described in this action.

##### Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 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 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 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. Thus this rule is not subject to the requirements of section 202 and 205 of UMRA.

##### Executive Order 13132

##### *Federalism Summary Impact Statement*

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

##### *Prior Consultation With State Officials*

Prior to drafting the rule, we received input from State and local agencies at various times. Since the FSP is a State administered, Federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to

provide feedback that forms the basis for many discretionary decisions in this and other FSP rules. In addition, we presented our ideas and received feedback on program policy at various State, regional, national, and professional conferences. Lastly, the comments from State and local officials on both the interim Balanced Budget Act rule and the proposed PRWORA rule were carefully considered in drafting this final rule.

#### *Nature of Concerns and the Need To Issue This Rule*

State agencies generally want greater flexibility in their implementation of FSP work requirements and in the operation of the E&T Program. State agencies have indicated that providing them this flexibility would greatly enhance their ability to more efficiently administer the FSP. They also want current rules streamlined to allow them to conform to the rules of other means tested Federal programs.

#### *Extent To Which We Meet Those Concerns*

FNS has considered the impact on State and local agencies. This rule deals mainly with changes required by law and made effective in 1996 and 1997. The effects on State agencies are moderate. While some of the changes result in modest increases in administrative requirements, the overall effect is to lessen the administrative burden by providing increased State agency flexibility in program operation and by allowing State agencies to streamline their program requirements. PRWORA and the Balanced Budget Act required most of the changes made in this rule and the changes were effective upon enactment of these statutes. FNS is not aware of any case where the discretionary provisions of the rule would preempt State law. In addition, we are willing to approve a waiver of any discretionary provision in this rule where: (1) A State agency can demonstrate that its own procedures would be more effective and efficient; (2) providing such a waiver would not result in a material impairment of any statutory or regulatory rights of participants or potential participants; and (3) it would otherwise be consistent with the waiver authority set out at 7 CFR 272.3(c).

#### **Regulatory Impact Analysis**

##### *Costs/Benefits*

There are no new effects of implementing the work-related provisions of PRWORA on food stamp recipients. The Regulatory impact

analysis associated with the proposed PRWORA rule, published December 23, 1999 (64 FR 72201–72202), contains the expected impact of those provisions. State agencies have already implemented those changes and no further impact is expected following publication of this final rule. Other than the effects of eliminating the maximum slot reimbursement rates, there are no new effects of implementing the work-related provisions of the Balanced Budget Act. The Regulatory Impact Analysis associated with the interim final Balanced Budget Act rule, published September 3, 1999 (64 FR 48252–48254), contained the expected impact of the provisions, which State agencies have already implemented. The provision to eliminate the maximum slot reimbursement rate is expected to increase Food Stamp Program expenditures by a range of \$25.3 million to \$62.0 million, depending on State agency actions, over the period FY 2002–FY 2012.

#### *Need for Action—Food Stamp Provisions of the Balanced Budget Act of 1997*

We believe that the regulatory effect of removing the maximum slot rates will have very little effect on State agencies' overall E&T spending patterns, which currently fall into four categories: (1) The 12 alternative reimbursement State agencies currently not bound by reimbursement rates as long as they provide work slots to all ABAWDs willing to comply with the work requirements. Data from the FNS–583 report indicate that if they had been subject to the rates, they would have overspent the maximum slot rates by some 47 percent in FY 2000. (2) Another 12 State agencies that reported spending over their maximum slot rates in FY 2000 and were reimbursed for 50 percent of the amount they overspent from Federal funds. The FY 2000 FNS–583 reports indicate that these State agencies overspent the maximum slot rates by 17 percent that year. (3) Another seven State agencies spending at maximum slot rates. (4) The 22 State agencies that spent under the slot rates in FY 2000.

We assume that both the alternative reimbursement State agencies and the State agencies that have spent under their slot rates will not change their spending patterns. Because alternative reimbursement State agencies' spending was not limited by the maximum slot rates, their spending is not expected to change with the elimination of those rates. Likewise, removing the slot rates will have no impact those State agencies

spending under their maximum slot rates.

Removing the slot rates could affect the remaining 19 State agencies that either spent over or exactly at their slot rates in a number of ways. The Federal government reimbursed State agencies that had already spent over their slot rates for 50 percent of the cost, which was some \$1.4 million in 2000. If slot rates are removed, and these State agencies do not change their spending patterns, all of the cost would be covered by 100 percent Federal funds. The increase in costs to the Federal government could be an additional \$1.5 million. If these State agencies were to increase their spending from 17 percent reported by States that overspent the maximum slot rates to the 47 percent that the alternative reimbursement State agencies spent in 2000, the additional Federal cost could be as much as \$3.6 million.

If slot rates are removed, we assume that State agencies that currently spend at 100 percent of their slot rates might increase their spending in one of two ways: either by the 17 percent level of the other State agencies that overspent, or by the 47 percent over the maximum slot rates that the alternative reimbursement State agencies spent. If they were to do the former, the additional Federal cost could be slightly over one-half million dollars; if they were to do the latter, that cost increases to \$1.5 million.

The total cost in FY 2003 ranges from \$2.3 million if State agencies increase their spending to 117 percent of the maximum to \$5.6 million if they increase their spending to 147 percent of the maximum. Allowing for inflation, the 10-year cost ranges from \$25.3 to \$62 million.

#### *Need for Action—Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*

This action is needed to implement the work provisions of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). These provisions: (1) Establish new disqualification penalties for noncompliance with FSP work requirements; (2) permit certain State agencies to lower the age at which a child exempts a parent or caretaker from food stamp work rules; (3) revise and streamline the E&T Program; (4) provide State agencies the option of using a household's food stamp benefits to subsidize a job for a household member participating in a work supplementation or support program; and (5) permit qualifying States to provide certain

households with cash in lieu of food stamps.

#### Benefits

State agencies will benefit from the provisions of this rule because they

streamline FSP work requirements, simplify the disqualification requirements for failure to comply with work rules, and provide greater flexibility for State agencies to operate their employment and training

programs. Removing the maximum slot rates will benefit States by enhancing administrative simplification and increasing program access to greater numbers of recipients.

### Impact of Removing Maximum Reimbursement Rates Fiscal years 2003—2012

(Dollars in millions)

FISCAL YEAR	03	04	05	06	07	08	09	10	11	12	03-12
<b>For States spending over max slot rates in FY 2000:</b>											
If no change in spending (already at 17%)	\$1.7	\$1.7	\$1.7	\$1.8	\$1.8	\$1.9	\$1.9	\$2.0	\$2.0	\$2.1	\$18.6
If spending increases 47% over max slot rates	\$3.9	\$ 4	\$ 4	\$4.2	\$4.3	\$4.4	\$4.5	\$4.6	\$4.7	\$4.8	\$43.4
<b>For States spending at max slot rates in FY 2000:</b>											
If spending increases by 17%	\$ .6	\$ .6	\$ .6	\$ .6	\$ .7	\$ .7	\$ .7	\$ .7	\$ .7	\$ .8	\$ 6.7
If spending increases by 47%	\$1.7	\$1.7	\$1.7	\$1.8	\$1.8	\$1.9	\$1.9	\$2.0	\$2.0	\$2.1	\$18.6
<b>Total if spending is 1.17% of maximum</b>	\$2.3	\$2.3	\$2.3	\$2.4	\$2.5	\$2.6	\$2.6	\$2.7	\$2.7	\$2.9	\$25.3
<b>Total if spending is 1.47% of maximum</b>	\$5.6	\$5.7	\$5.7	\$6.0	\$6.1	\$6.3	\$6.4	\$6.6	\$6.7	\$6.9	\$62.0

#### Paperwork Reduction Act

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (44 U.S.C. 3507).

The reporting and recordkeeping burdens associated with the 15 percent exemption and the increased funding for State E&T programs authorized by the Balanced Budget Act and addressed in this rule necessitated a revision to a previously approved information collection activity, the Employment and Training Program Report (FNS-583), approved under OMB No. 0584-0339. Because the Balanced Budget Act mandated implementation of the food stamp provisions addressed in this rule effective October 1, 1997, without regard to whether regulations were promulgated to implement them, FNS submitted an emergency request to OMB on February 17, 1998, to revise the information collection for the FNS-583 form to reflect the requirements of the statute. FNS estimated the total annual burden hours associated with the revised FNS-583 to be 195,363 hours—182,643 hours for the work registration process, 2,762 hours for the 15 percent

ABAWD exemption, and 9,958 hours for the E&T funding requirements. OMB approved the burden estimate for the revised form for six months, with an expiration date of August 31, 1998.

On April 27, 1998, FNS issued a notice in the **Federal Register** (63 FR 20567) describing in detail the revised collection of information and requesting comments. FNS received no comments from the general public or other public agencies about the information collection.

On September 23, 1998, FNS received an extension of OMB's approval of the revised burden estimate for the FNS-583 through September 30, 2001.

On June 8, 2001, FNS issued a notice in the **Federal Register** (66 FR 30877) inviting the general public and other public agencies to comment on the proposed extension of the information collection previously approved. FNS received one comment, which suggested that FNS provide State agencies the means to electronically submit their FNS-583 reports, and that FNS create an online help system with detailed instructions for completing the form. No action was necessary because State agencies already have the ability to submit their FNS-583 reports

electronically via the Food Stamp Program Integrated Information System (FSPIIS). Additionally, FSPIIS contains a through help system, recently revised, which provides detailed instructions for completing each area of the FNS-583.

On September 12, 2001, FNS submitted to OMB a request to approve a revised total annual burden of 190,541 hours associated with the FNS-583: (1) 84,657 hours for household members participating in the work registration process; (2) 42,328 hours maintaining data on work registration; (3) 708 hours tracking the numbers of ABAWDs exempted under the 15 percent exemption allowance; (4) 60,800 hours recording ABAWD E&T activities; and (5) 2,048 hours compiling and recording data on the FNS-583.

On December 21, 2001, OMB approved an extension of OMB No. 0584-0339 through December 31, 2004.

Sections 272.2 and 273.7 contain information collection requirements. The Food and Nutrition Service submitted a copy of this section to OMB for its review.

The regulations at 7 CFR 272.2 require that State agencies plan and budget program operations and establish objectives for each year. Section 273.7 contains requirements for the State

Employment and Training Plan, one of the required planning documents. In the interest of State flexibility, the PRWORA provisions addressed in this rule deleted State E&T planning requirements for describing the intensity of E&T services, conciliation procedures, and Statewide limits for dependent care reimbursements, while adding the requirement that State agencies provide a description of their mandatory disqualification procedures and periods for noncompliance with FSP work requirements.

The respondents are 53 State agencies and they are required to respond once a year. It is estimated that the total annual reporting burden is 3,768 hours.

The PRWORA provisions addressed in this rule deleted reporting burdens in the interest of State flexibility, while adding a new burden associated with each State agency's mandatory disqualification procedures. Thus, the overall reporting and recordkeeping burden for this proposed information collection is unchanged.

PRWORA provided State agencies the option of implementing work supplementation or support programs. In these programs the cash value of public assistance benefits, plus food stamps, is provided to an employer as a wage subsidy to be used for hiring and employing public assistance recipients. This rule proposes to add the work supplementation or support plan, as required at § 273.7(l)(1), to the planning requirements at 7 CFR 272.2.

The potential respondents are any of the 53 State agencies that may opt to initiate a work supplementation or support program. The one-time burden associated with a State agency creating a plan for a work supplementation or support program is estimated to be 100 hours. However, since no State agency has opted to initiate a work supplementation or support program since the enactment of PRWORA, it is anticipated that this provision will not change the burden associated with this information collection.

In the proposed rule dated December 23, 1999 (64FR72196) at page 72209, FNS solicited comments from organizations and individuals on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and the information to be collected; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments were directed to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention Desk Officer for the Food and Nutrition Service.

The comment period closed February 22, 2000. OMB did not receive any comments concerning the proposed information collection requirement.

The information collection requirements contained in this rule are currently approved under OMB control number 0584-0339. FNS is in the process of revising these requirements with the intent of reducing administrative burden and accommodating the elimination of the maximum slot reimbursement rate. FNS plans to request OMB approval of these revisions after soliciting public comment via a **Federal Register** notice.

#### Background

In August 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or PRWORA (Pub. L. 104-193). PRWORA—popularly known as “welfare reform”—contained several FSP work-related provisions that strengthen work requirements, promote personal responsibility, streamline E&T requirements, and greatly increase State flexibility.

Section 815 of PRWORA dealt with disqualification for noncompliance with FSP work requirements. It added to the list of ineligible individuals at section 6(d)(1) of the Food Stamp Act those who: (1) Refuse without good cause to provide sufficient information to allow a determination of their employment status or job availability; (2) voluntarily and without good cause quit their job (previously limited to heads of households); (3) voluntarily and without good cause reduce their work effort and, after the reduction, work less than 30 hours a week; and (4) fail to comply with the workfare rules in section 20 of the Food Stamp Act (7 U.S.C. 2029). Section 815 removed the requirement that the entire food stamp household be disqualified if the head of the household is disqualified. Instead, it provided States the option to disqualify the entire household if the head of the household is disqualified. Section 815 established new mandatory minimum disqualification periods for individuals who fail to comply with work

requirements. It required the Secretary of Agriculture (the Secretary) to determine the meanings of good cause, voluntary quit, and reduction of work effort. It required States to determine: (1) The meaning of other terms related to FSP work requirements; (2) the procedures for determining compliance with work requirements; and (3) whether an individual is actually complying with work requirements. Lastly, Section 815 specified that States may not use meanings, procedures, or determinations that are less restrictive on food stamp recipients than comparable meanings, procedures, or determinations are on recipients of assistance under State programs funded under title IV-A of the Social Security Act (title IV-A) (42 U.S.C. 601 et seq.).

Section 817 of PRWORA streamlined E&T administrative requirements for States by: (1) Requiring E&T components to be delivered through a statewide workforce development system, if available; (2) expanding the existing State option to apply E&T requirements to applicants (previously limited to job search); (3) eliminating the requirement that job search components be comparable with those operated under title IV-A; (4) removing requirements for work experience components that mandated they serve a useful public service and that they use a participant's prior training, experience, and skills; (5) removing specific Federal rules as to States' authority to exempt categories of individuals and individuals from E&T requirements, as well as removing the requirement that such exemptions be evaluated no less often than at each certification or recertification of the affected food stamp case; (6) deleting outdated language concerning applications by States to provide priority service to volunteer E&T participants; (7) removing the requirement that States permit, to the greatest practicable extent, work registrants exempted from E&T, as well as E&T participants who comply with or are in the process of complying with program requirements, to participate in E&T, while maintaining the States' option to permit voluntary participation; (8) removing the requirement for conciliation procedures to resolve disputes involving participation in E&T; (9) removing the requirement that States' limits for payments or reimbursements of dependent care expenses to E&T participants must be at least as high as the FSP dependent care deduction cap; (10) removing the requirements for E&T performance standards; (11) adding the

provision that the amount of funds States use to provide E&T services to participants receiving benefits under a State program funded under title IV-A cannot exceed the amount of funds, if any, States used in fiscal year (FY) 1995 to provide E&T services to participants who were receiving benefits under title IV-A; and (12) removing the Secretary's authority to withhold funds from States for failure to comply without good cause with E&T requirements.

Three other PRWORA provisions added new language to the Food Stamp Act. Section 816 permitted certain States to lower the age at which a child exempts a parent/caretaker from food stamp work rules. Section 849 provided States the option of using a household's food stamp benefits to subsidize a job for a household member participating in a work supplementation program. Section 852 permitted qualifying States to provide certain households with cash in lieu of food stamps.

Additionally, PRWORA made significant changes to the workfare provisions at section 20 of the Food Stamp Act. It removed the States' ability to comply with section 20 by operating a workfare program under title IV-A. It removed the provision that permitted States to combine the value of a household's food stamp allotment with the value of assistance received by the household from a program under title IV-A in order to determine the number of monthly hours of participation required of those households in a title IV-A community work experience program. Lastly, it eliminated disqualification provisions specific to the optional workfare program and incorporated noncompliance with workfare into the disqualification provisions governing noncompliance with FSP work requirements.

PRWORA also contained major changes in the requirements for Federal financial participation in the E&T program. Subsequently, the Balanced Budget Act further amended those requirements.

On August 5, 1997, the President signed into law the Balanced Budget Act. The Balanced Budget Act included two provisions addressed in this final rule. The first provision provided State agencies the authority to exempt up to 15 percent of a State agency's caseload that is subject to the food stamp time limit at section 6(o)(2) of the Food Stamp Act of 1977. The second provision provided additional funding for administration of the E&T Program.

The Department received a combined total of 234 comments from eleven commenters on the interim Balanced Budget Act rule and 24 commenters on

the proposed PRWORA rule. The Department is grateful to each commenter for taking the time and effort to respond.

We carefully reviewed and considered each comment while preparing this final rule for publication. We have addressed significant comments received in response to the regulatory changes proposed in the interim and proposed rulemakings. We will not address comments that were not germane to the amendments to the Food Stamp Act contained in PRWORA and the Balanced Budget Act or to resulting changes to the Federal regulations contained in the proposed rule. A number of comments supported our proposed changes. However, we will not discuss those in great detail.

Provisions of the interim and proposed rulemakings that received no comment are not addressed in this rule. Those provisions are adopted as final without change. For an explanation of those provisions, please refer to the interim and proposed rulemakings.

#### **Program Work Requirements**

Current regulations at 7 CFR 273.7 require that all physically and mentally fit food stamp recipients over the age of 15 and under the age of 60 who are not otherwise exempted be registered for work by the State agency at the time of application and once every 12 months thereafter. Work registrants are required to participate in an E&T program if assigned by the State agency, provide information regarding employment status and availability for work, report to an employer if referred, and accept a bona fide offer of suitable employment at a wage no less than the applicable State or Federal minimum wage, whichever is highest.

Failure to meet these requirements without good cause results in a 2-month disqualification. If the noncompliant individual is the head of the household, the entire household is disqualified for two months. Otherwise, only the individual is disqualified.

Additionally, if the head of the household voluntarily quits a job of 20 or more hours a week, without good cause, 60 days or less prior to applying for food stamps, or at any time thereafter, the entire household is disqualified for 90 days.

Eligibility may be reestablished by the household during a disqualification period if the head of the household becomes exempt from the work registration requirement, is no longer a member of the household, or complies with the requirement in question. Disqualified individuals may reestablish eligibility by becoming exempt from the

work registration requirement or by complying with the requirement in question.

Certain food stamp recipients are exempt from work registration requirements. Among these exempt individuals are those currently subject to and complying with a work registration requirement under title IV-A or the Federal-State unemployment compensation system. If these individuals fail to comply with any work requirement to which they are subject that is comparable to a FSP work requirement, they are subject to disqualification.

In accordance with section 815 of PRWORA, which contains amendments to section 6(d)(1) of the Food Stamp Act, the rulemaking proposed several changes to current regulations. In this rule we are addressing only those proposed changes that received comment. Provisions of the proposed rulemaking that received no comment are adopted as final without change.

#### *Work Registrant Requirements*

The current regulation at 7 CFR 273.7(a) contains the work registration requirement for nonexempt food stamp household members.

Current regulations at 7 CFR 273.7(e) list the responsibilities and requirements for work registrants.

Current regulations at 7 CFR 273.22 contain FSP workfare participation requirements for households. 7 CFR 273.22(f)(6) provides for penalties for failure to comply with workfare requirements.

Section 815 of PRWORA aligned workfare penalties with other work penalties. It amended section 20 of the Food Stamp Act by removing workfare disqualification provisions, and further amended section 6(d)(1) by including refusal without good cause to comply with section 20 of the Food Stamp Act as a reason for disqualification.

The Department proposed to amend 7 CFR 273.22(f) by removing paragraph (6), Failure to Comply, and to amend 7 CFR 273.7(e) by adding as a work registrant requirement participation in a workfare program if assigned.

The Department further proposed to incorporate the work registrant requirements listed in 7 CFR 273.7(e) into 7 CFR 273.7(a), redesignate it 7 CFR 273.7(a)(1) and rename it *work requirements*.

The Department also proposed to incorporate the participation requirements for strikers listed in 7 CFR 273.7(j); the requirements for registration of certain PA, GA, and refugee households listed in 7 CFR 273.7(k); and the provisions for

applicants applying for SSI and food stamps under § 273.2(k)(1)(i), listed in 7 CFR 273.7(l), into 7 CFR 273.7(a), and redesignate them 7 CFR 273.7(a)(4), (a)(5), and (a)(6) respectively.

Lastly, the Department proposed to make the following changes to 7 CFR 273.7: (1) Redesignate the current provisions at 7 CFR 273.7(f), (g), (h), (i), (m), and (n) as 7 CFR 273.7(e), (f), (g), (h), (i), and (j) respectively; (2) delete the current provisions at 7 CFR 273.7(o) and (p) and add new provisions, designated 7 CFR 273.7(k) and (l); (3) redesignate the provisions for the optional workfare program at 273.22 as 7 CFR 273.7(m); and (4) remove 7 CFR 273.22.

Three commenters questioned the language in sections 273.7(a)(1)(ii) and 273.7(a)(1)(iii) that requires each household member not exempt from Program work requirements to participate in an E&T program or in an optional workfare program if assigned by the State agency, *to the extent required by the State agency*. The commenters believe the language further empowers State agencies to create definitions related to work requirements.

Section 815 of PRWORA added the phrase “to the extent required by the State agency” to the E&T participation requirement contained in section 6(d)(1)(A)(ii) of the Food Stamp Act. Its purpose is to emphasize State agency flexibility in setting participation requirements for E&T program components, within the limits specified in the Food Stamp Act. The Department has no discretion to remove this phrase from the E&T participation requirement. However, we agree that adding such language to the workfare program participation requirement at 273.7(a)(1)(iii) could result in a State agency inadvertently assigning food stamp household members to participate in workfare beyond the maximum legal limit of the number of hours resulting from dividing the value of the household’s monthly food stamp allotment by the higher of the Federal or applicable State minimum wage. In this final rulemaking we are, therefore, removing the phrase “to the extent required by the State agency” from section 273.7(a)(1)(iii).

No further comments germane to the proposed changes were received. With the change noted above, the Department is adopting in this final rulemaking the revisions as proposed.

#### *Administrative Responsibilities*

Current regulations at 7 CFR 273.7(m) assign to State agencies the responsibility for determining the

existence of good cause in instances when an individual fails or refuses to comply with FSP work requirements. 7 CFR 273.7(n) assigns to State agencies the responsibility for determining whether or not a voluntary quit occurred.

Section 815 of PRWORA amended the Food Stamp Act by adding a new provision, section 6(d)(1)(D), Administration. Section 6(d)(1)(D) assigned to the Secretary responsibility for determining the meanings of “good cause,” “voluntary quit,” and “reduction of work effort,” and assigned to State agencies the responsibility for determining: (1) The meaning of all other terms relating to work requirements; (2) the procedures for determining whether an individual is in compliance with work requirements; and (3) whether an individual is actually in compliance with work requirements.

However, section 6(d)(1)(D) prohibits State agencies from assigning a meaning, procedure, or determination that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under a State program funded under title IV–A.

The Department proposed to amend 7 CFR 273.7(a) by assigning to FNS the responsibility for determining the meaning of “good cause,” “voluntary quit,” and “reduction of work effort” in regard to FSP work requirements. The Department further proposed to amend 7 CFR 273.7(a) by assigning to the State agency responsibility for determining the meaning of all terms related to FSP work requirements; for establishing the procedures for determining whether an individual is in compliance with work requirements; and for determining whether an individual is in actual compliance with work requirements. The State agency may not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination is on recipients of a State program funded under title IV–A. The Department proposed to incorporate these provisions in new paragraphs, 7 CFR 273.7(a)(2) and 7 CFR 273.7(a)(3) respectively.

Three commenters recommended that, for clarity, we cross-reference the subparagraphs of 273.7 that contain the good cause, voluntary quit, and reduction of work effort provisions. The Department has added the cross-references to the final rule. Otherwise, the Department is adopting in this final rulemaking the revisions as proposed.

#### *Household Ineligibility*

Current regulations at 7 CFR 273.7(g)(1) require that an individual, other than the head of household, who fails or refuses without good cause to comply with FSP work requirements be disqualified from participation. However, if the head of household fails or refuses without good cause to comply, the entire household must be disqualified.

Section 815 of PRWORA amended section 6(d)(1) of the Food Stamp Act by removing the requirement that the entire household be disqualified if the head of the household fails or refuses without good cause to comply. Instead, section 815 provided State agencies the option to disqualify the entire household if the head of household fails or refuses without good cause to comply with work requirements. It limited the length of such an optional household disqualification to the duration of the disqualification period applied to the individual or 180 days, whichever is shorter.

The Department proposed to amend redesignated 7 CFR 273.7(f) by eliminating the requirement in paragraph (1) that the entire household be disqualified if the head of the household fails to comply. The Department further proposed to add a new paragraph (4), *Household Ineligibility*, to provide that a State agency has the option to disqualify the entire household if the head of the household becomes ineligible to participate in the FSP for failure to comply with work requirements. If the State agency chooses this option, it may disqualify the household for the duration of ineligibility of the head of the household, or for 180 days, whichever is less.

One commenter recommended that the State keep the current requirement that the entire household be disqualified if the head of household is disqualified. The State agency option to disqualify the entire household if the head of the household is disqualified is a statutorily mandated provision. The Department has no discretion to make such an action mandatory.

Another commenter suggested that the final rule clarify that, when the entire household is disqualified when the head of household is disqualified, the household’s disqualification must end if the head of the household becomes exempt from food stamp work requirements and his or her disqualification ends. The Department agrees that this clarification would be helpful. The final rule is amended to

include language to that effect at 273.7(f)(5)(iii)(C).

No further comments on this proposed amendment were received. With the changes noted above, the Department is adopting in this final rulemaking the revisions as proposed.

#### *Disqualification Periods*

Current regulations at 7 CFR 273.7(g)(1) establish a 2 month disqualification period to be imposed for failure or refusal without good cause to comply with FSP work requirements.

Section 815 of PRWORA amended sections 6(d)(1)(a) and (b) of the Food Stamp Act to establish mandatory disqualification periods—based on the frequency of the violation—for individuals who fail to comply with FSP work requirements. For the first violation, the individual is disqualified until the later of the date the individual complies with FSP work requirements, 1 month, or, at State agency option, up to 3 months. For the second violation, the individual is disqualified until the later of the date the individual complies with FSP work requirements, 2 months, or a period—determined by the State agency—not to exceed 6 months. For the third or subsequent violation, the individual is disqualified until the later of the date the individual complies with FSP work requirements; 6 months; a date determined by the State agency; or, at the option of the State agency, permanently.

The Department proposed to amend redesignated 7 CFR 273.7(f) by deleting reference to a 2 month disqualification period and by inserting a new paragraph, 7 CFR 273.7(f)(2), *Disqualification Periods*. The new paragraph (2) provides for minimum mandatory disqualification periods for individuals who fail or refuse without good cause to comply with work requirements. State agencies are free to elect which disqualification period they institute for each level of noncompliance. However, each State agency must apply its disqualification policy uniformly, statewide.

We further proposed to add a new paragraph (d)(xiii) under 7 CFR 272.2, *Plan of operation*. Paragraph (d)(xiii) contains the requirement for each State agency's disqualification policies.

One commenter suggested that, because food stamp regulations require State agencies to retain program records for only 3 years, the final rule should permit State agencies to disregard events that took place more than 3 years previously when determining the length of the disqualification to be imposed under section 273.7(f)(2). We disagree. The Food Act makes it very clear that

3 years is a minimum period. Section 11(a) of the Food Stamp Act specifies that State agencies must keep “such records as may be necessary to ascertain whether the program is being conducted in compliance with the provisions of this Act and the regulations issued pursuant to this Act. Such records shall be available for inspection and audit at any reasonable time and shall be preserved for such a period of time, not less than three years, as may be specified in the regulations issued pursuant to this Act.” PRWORA requires State agencies to establish successively longer disqualification periods for each additional violation of FSP work requirements (up to the third violation). The Department has no authority to permit State agencies to disregard earlier violations when determining the disqualification period for a subsequent violation.

With this change, the proposed redesignated 7 CFR 273.7(f) is adopted in the final rule.

#### *Good Cause*

The current regulations at 7 CFR 273.7(m) assign to State agencies responsibility for determining good cause when an individual fails to comply with FSP work registration, E&T, and voluntary quit requirements. The regulations include as good cause circumstances beyond the individual's control. One example cited is the lack of adequate childcare for children ages 6 to 12.

The current regulations at 7 CFR 273.7(n)(3) contain the good cause requirements specifically concerning voluntary quit, as well as the procedures for verifying questionable information concerning voluntary quit.

Section 815 of PRWORA amended section 6(d)(1) of the Food Stamp Act by deleting language that included the lack of adequate child care for children between 6 and 12 as good cause for refusing to accept an offer of employment, and by assigning to the Secretary specific authority to define the meaning of good cause. We believe that Congress did not intend to eliminate lack of adequate child care as a valid good cause reason, thereby forcing parents to choose between the well-being of their children and the demands of FSP work requirements. Instead, by deleting this reference to a very specific, single instance of noncompliance, we believe Congress intended to eliminate any confusion about applying good cause criteria equitably across-the-board to all FSP work requirements. Therefore, lack of adequate childcare remains as a good cause reason for noncompliance.

Although current good cause regulations remain basically unchanged, the Department proposed to take the opportunity to amend redesignated 7 CFR 273.7(i) and redesignated 7 CFR 273.7(j) by combining the provisions under the specific heading “Good Cause” at redesignated 7 CFR 273.7(i). We also proposed to add language to redesignated 7 CFR 273.7(i) reminding State agencies that it is not possible for the Department to enumerate each individual circumstance that should or should not be considered good cause. State agencies must consider all facts and circumstances in each individual case concerning the determination of good cause.

Three commenters recommended that Section 273.7(i)(3)(vii) be amended. This provision states that acceptance of a bona fide offer of employment of more than 20 hours a week (or employment paying at least the Federal minimum wage equivalent of 20 hours a week) that, because of circumstances beyond the individual's control, subsequently either does not materialize or results in employment of less than 20 hours a week (or earnings of less than the Federal minimum wage equivalent of 20 hours a week) constitutes good cause for leaving employment. The commenters suggested that changing the number of hours to 30 a week would conform the good cause provision to the level of work effort necessary to exempt an individual from FSP work requirements and to the voluntary quit and reduction of work effort thresholds. The Department agrees. The final rule is amended accordingly.

#### *Voluntary Quit*

Current regulations at 7 CFR 273.7(n) contain the procedures for disqualifying a household whose head voluntarily quits a job without good cause 60 days or less before applying for food stamps, or at any time thereafter. For purposes of establishing voluntary quit, a “job” is considered employment of 20 or more hours per week, or employment that provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. A Federal, State, or local government employee dismissed from employment because of participation in a strike is considered to have voluntarily quit without good cause.

In the case of applicant households, if the State agency determines that a voluntary quit by the head of household was without good cause, the household's application for benefits will be denied and it will not be eligible for benefits for 90 days, starting with the date of the quit.



In the case of participating households, if the State agency determines that a head of household voluntarily quit a job while participating in the FSP, or discovers that a quit occurred within 60 days prior to application or between application and certification, the household will be disqualified from participation for 90 days, beginning with the first of the month after all normal adverse action procedures are completed.

Following the end of a voluntary quit disqualification, a household may reapply and, if otherwise eligible, begin participation in the FSP. Eligibility may be reestablished during a disqualification period and the household may, if otherwise eligible, resume participation if the head of household secures new employment comparable to the job that was quit, or leaves the household. Eligibility may also be reestablished if the head of household becomes exempt from work registration. If the disqualified household splits, the disqualification follows the head of household. If that individual becomes head of a new household, that household must serve out the balance of the disqualification period.

If a disqualified household applies for participation in the third month of its disqualification, it does not have to reapply in the next month. The State agency must use the same application to deny benefits in the remaining month of disqualification and to certify the household for any subsequent month(s) if it is otherwise eligible.

Section 815 of PRWORA amended section 6(d)(1) of the Food Stamp Act by removing the requirement that only the head of household is subject to voluntary quit. As with all the other sanctionable actions listed in section 6(d)(1)(A), each individual household member was made subject to disqualification for a voluntary quit. The State agency was afforded the option of disqualifying the entire household if the quitter is the head of household.

Section 6(d)(1) was further amended by eliminating the 90-day disqualification period for voluntary quit. Penalties for voluntary quit are based on the minimum mandatory disqualification provisions contained in PRWORA.

Lastly, section 815 of PRWORA amended section 6(d)(1) by adding the provision that an individual who voluntarily and without good cause reduces work effort and, after the reduction, works less than 30 hours per week, must be disqualified.

The Department proposed to retain the 60-day pre-application period for establishing voluntary quit and to apply the same standard when determining reduction of work effort for applicants. The voluntary quit and reduction in work effort provisions aim to deter individuals with reasonable income from intentionally ending or reducing that income to qualify for food stamps or to increase coupon allotments. We felt that 60 days is a reasonable time span to use to gauge intent.

One commenter suggested that the 60-day period for establishing voluntary quit or reduction in work effort is too long a time for caseworkers to obtain and evaluate as reliable verifications of potential good cause reasons for job quit or reduction in work effort.

The Department agrees. Because of fluctuating work hours, personnel turnover, and other variables, the 60-day period may pose verification problems for State agencies. Reducing the period to 30 days will make it much easier for a caseworker to obtain reliable good cause information, without degrading the seriousness or the impact of good cause and reduction in work effort determinations. However, since some State agencies are committed to the 60-day "look-back" period for establishing voluntary quit and reduction of work effort, the Department believes it should afford each State agency the option to determine which period best suits its particular needs. The final rule is therefore amended to provide State agencies the option of establishing a period between 30 and 60 days for determining voluntary quit and reduction in work effort.

We also proposed to increase the 20-hour/equivalent Federal minimum wage figure used in defining voluntary quit to 30 hours. Increasing the number of hours to 30 provides a logical connection between voluntary quit and the reduction of work effort threshold mandated by Congress. The 30-hour figure also conforms to the number of hours of work required to exempt an employed recipient from FSP work requirements. The Department welcomed comments on this issue. None were received.

Congress clearly stated that any reduction in hours of employment to less than 30 hours a week without good cause must be penalized. We do not believe Congress intended that a minimum wage equivalent of 30 hours be considered when establishing voluntary reduction in work hours. The Department proposed to make this clear in the rule. We also proposed to incorporate good cause for reduction of work effort into the good cause

provision at redesignated 7 CFR 273.7(i). There were no germane comments concerning the reduction in work effort provision.

One commenter questioned the current regulatory requirement that a claim be established in certain instances of voluntary quit or reduction in work effort. If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or the State agency establishes voluntary quit or reduction in work effort in the last 30 days of the certification period, and the individual does not apply for food stamp benefits by the end of the certification period, the State agency must establish a claim for the benefits received by the individual for the number of months equal to the mandatory disqualification period. The commenter believes this requirement is confusing, places an undue claims burden on State agencies, and is inconsistent with penalties for noncompliance with all other FSP work requirements. We agree. We are taking this opportunity to revise the voluntary quit language by eliminating the requirement to establish claims in such situations. This final rule will clarify that the appropriate mandatory disqualification period is to be imposed after timely and adequate notice of adverse action is taken, regardless of whether the individual reapplies for food stamps.

No further comments on the voluntary quit provision were received. With the revisions discussed above, this final rulemaking adopts these provisions.

#### **Caretaker Exemption**

Current regulations at 7 CFR 273.7(b)(iv), pursuant to section 6(d)(2)(B) of the Food Stamp Act, exempt from FSP work requirements a parent or other household member who is responsible for the care of a dependent child under six. Prior to the enactment of PRWORA, eight State agencies had submitted requests to waive this regulation to require caretakers of children less than six years old to participate in their proposed welfare reform demonstration projects. The purpose of these waivers was to conform FSP and title IV-A work requirements in order to provide the State agencies maximum flexibility in the operation of their demonstrations. The Department believed that the States' requests violated section 17(b) of the Food Stamp Act, which prohibited the approval of a waiver that would lower or further restrict the benefit levels of food stamp recipients. The Department concluded that the approval of these waivers would subject food stamp



recipients to work requirements and possible sanctions that they would not be subject to under regular program rules. Therefore, the waivers were denied.

Section 816 of PRWORA amended section 6(d)(2) of the Food Stamp Act by adding an option to allow State agencies that previously requested a waiver to lower the age of the qualifying dependent child to less than six. Under this option, State agencies that had requested such a waiver, but were denied before August 1, 1996, could lower the age of a qualifying dependent child to between one and six years. This option could be exercised for a period of not more than three years.

The Department proposed to amend 7 CFR 273.7(b)(iv) to include a provision offering this option to the State agencies of Alabama, Kansas, Maryland, Michigan, North Dakota, Virginia, Wisconsin, and Wyoming. According to FNS records, these were the State agencies that were denied the exemption waivers before August 1, 1996. The Department proposed to allow these State agencies, upon submission of written notification to the Department, to lower the age of a dependent child that qualifies a parent or other household member for an exemption to between one and six, for a maximum of 3 years. The State agencies of Alabama, North Dakota, and Virginia never implemented the option. The remaining eligible State agencies implemented the option on the following dates: Kansas—March 3, 1997; Maryland—November 11, 1996; Michigan—November 1, 1996; Wisconsin—January 1, 1997; and Wyoming—January 1, 1997.

Commenters pointed out that, like all other PRWORA provisions for which a specific effective date was not specified, the caretaker option should have been made effective upon enactment of the law on August 22, 1996. Therefore, they believe the 3 years have passed and the provision is obsolete. They recommend that it be omitted from the final rule.

The Department agrees that the effective date for the caretaker option should have been established as August 22, 1996. Therefore, the 3-year implementation period has expired and the provision is obsolete. In this final rulemaking, the Department is deleting the proposed caretaker exemption at 273.7(b)(iv)(B), and is redesignating 273.7(b)(iv)(A) as 273.7(b)(iv).

#### Employment and Training Program

Section 817 of PRWORA amended section 6(d)(4) of the Food Stamp Act. Section 6(d)(4) contains provisions for the E&T Program. In the December 23,

1999, PRWORA rulemaking the Department proposed several changes to current E&T regulations. In this rule we are addressing only those proposed changes that received comment. Provisions of the proposed rulemaking that received no comment are adopted as final without change.

#### Job Search and Job Search Training

Current regulations at 7 CFR 273.7(f)(1)(i) authorize a State agency to offer a job search component comparable to that required of a program under title IV–A. Aside from the initial applicant job search period, discussed above, the work registrant can be required to conduct a job search of up to eight weeks (or an equivalent period) in any consecutive 12-month period. The first such 12-month period begins at any time following the close of the initial period.

Section 817 of PRWORA amended section 6(d)(4)(B) of the Food Stamp Act by deleting the title IV–A comparability requirement for job search.

The Department proposed to amend redesignated 7 CFR 273.7(e)(1)(i) by deleting the requirement that a State agency's E&T job search component must be comparable to its title IV–A job search component.

In keeping with the State agency flexibility offered under PRWORA, the Department further proposed to amend redesignated 7 CFR 273.7(e)(1)(i) by removing the annual 8-week job search limitation. Each State agency will be free to conform its E&T job search to that of its title IV–A work program, or to establish job search requirements that, in the State agency's estimation, will provide participants a reasonable opportunity to find suitable employment. However, the Department agrees with one commenter who believes that if a reasonable period of job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive. The final rule includes a statement to that effect.

Lastly, the Department proposed to amend redesignated 7 CFR 273.7(e)(1)(i) by adding that, in accordance with section 6(o)(1)(A) of the Food Stamp Act and 7 CFR 273.24 of the regulations, a job search program operated as a component of a State's E&T program *does not meet* the definition of work program relating to the participation requirements necessary to maintain eligibility for able-bodied adults without dependents (ABAWDs) subject to the 3-month food stamp time limit. The Department proposed to add this same notice at redesignated 7 CFR

273.7(e)(1)(ii), which describes job search training programs. These additions also specify that the prohibitions against E&T job search and job search training do not apply to such programs operated under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*) (the WIA), or under section 236 of the Trade Act of 1974 (19 U.S.C. 2296) (the Trade Act). Further, we proposed to amend redesignated 7 CFR 273.7(e)(1) to add that job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components.

Section 273.7(e)(1)(ii) explains that a reasonable job search training and support activity includes job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. A commenter urged the Department to provide a basis for evaluating whether or not a local district's job search requirements are, in fact, reasonable under the circumstances, and whether or not they are designed to effectively assist individuals in obtaining employment. They believe the final rule should clarify that when a local district's program requirements are unreasonable, individuals may not be disqualified because they do not participate. The Department disagrees. The State agency is in the best position to evaluate reasonableness for its clientele and local labor markets. Each State agency must be permitted to establish what it believes is a reasonable and effective program for its circumstances. However, in cases where the Department determines that a State agency's requirements are unreasonable, it will, in accordance with the authority granted it under section 6(d) of the Food Stamp Act, require the State agency to amend its practices.

No other comments were received concerning the proposed amendments. The Department is adopting in this final rulemaking the revisions as proposed.

#### Workfare

Current regulations at 7 CFR 273.7(f)(1)(iii) authorize assignment to workfare components operated in accordance with section 20 of the Food Stamp Act and 7 CFR 273.22.

As part of a workfare program, the Food Stamp Act permits operating agencies to establish a job search period

of up to 30 days following certification prior to making a workfare assignment. During this period, the participant is expected to look for a job. The job search period may only be conducted at certification, not at recertification. This job search activity is part of the workfare assignment and not a job search "program." Therefore, participants are to be considered as participating in and complying with the requirements of workfare, thereby satisfying the ABAWD work requirement.

The Department proposed to amend redesignated 7 CFR 273.7(e)(1)(iii) to include a statement that makes it clear that the job search period authorized by State agencies for workfare components is not a job search "program" and that participants are considered to be participating in and complying with the requirements of workfare.

A commenter recommended that the reference to certification in this section, as the permissible starting point for the 30-day job search phase of workfare, be removed in order to authorize assignment of applicants to workfare job search. Section 20(e) of the Food Stamp Act allows the operating agency to permit a job search period, prior to making workfare assignments, *following a determination of eligibility*. The language of the Food Stamp Act is very specific as to the time frame in which workfare job search is permitted. The Department has no discretion to make the recommended change. However, as discussed above, under section 6(d)(4)(B) of the Food Stamp Act, the State agency may impose a job search requirement on a program applicant at the time of application, for a period adequate to meet program goals.

No other comments were received concerning the proposed amendments. The Department is adopting in this final rulemaking the revisions as proposed.

#### *Federal Financial Participation*

Section 817 of PRWORA amended section 6(d)(4) of the Food Stamp Act by adding a provision that limits the amount of money State agencies may spend to provide E&T program services to food stamp recipients who also receive benefits under a State program funded under title IV-A. The limit is the amount of Federal E&T funds the State agency spent on E&T services for the same category of recipients in FY 1995. The Department proposed, therefore, to add, at 7 CFR 273.7(d)(1)(i)(F), the provision that, notwithstanding any other provision of the paragraph, the amount of E&T funds, including participant and dependent care reimbursements, a State agency uses to

serve participants who are receiving benefits under a State program funded under title IV-A may not exceed the amount of funds the State agency used in FY 1995 to serve participants who were receiving benefits under a State program funded under title IV-A.

Based on information provided by each State agency, the Department established claimed Federal E&T expenditures on this category of recipients in FY 1995 for the State agencies of Colorado (\$318,613), Utah (\$10,200), Vermont (\$1,484,913), and Wisconsin (\$10,999,773). These State agencies may spend a like amount each fiscal year to serve food stamp recipients who also receive title IV-A assistance, if they choose. Other State agencies are prohibited from expending any Federal E&T funds on title IV-A recipients.

Two commenters recommended that the final rule clearly identify the group to which the funding prohibition applies (title IV-A cash recipients or title IV-A supportive services recipients). This final rulemaking makes clear that the funding prohibition applies to individuals receiving cash assistance under title IV-A of the Social Security Act. The Department is amending the language at 7 CFR 273.7(d)(1)(i)(F) in this final rule to change the word "benefit" to "cash assistance."

#### **Funding for Food Stamp Employment and Training Programs**

Prior to enactment of the Balanced Budget Act, FSP regulations at section 273.7(d) required FNS to allocate an annual 100 percent Federally funded E&T grant to State agencies based on the number of work registrants in each State compared to the number of work registrants nationwide. The grant requires no State match. Each State agency must receive at least \$50,000 in 100 percent Federal funds. State agencies are required to use their E&T grants to fund the administrative costs of planning, implementing and operating E&T programs. FNS pays 50 percent of all other administrative costs above those covered by the 100 percent Federal grant that State agencies incur in operating their E&T programs.

Section 1002 of the Balanced Budget Act authorized an additional \$599 million over five years in 100 percent Federal funding for the operation of the E&T programs. The Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105-185) reduced authorized levels by \$100 million in FY 1998 and \$45 million in FY 1999. Additionally, the Agriculture, Rural Development, Food and Drug

Administration, and Related Agencies Appropriations Act of 2001, signed into law on October 28, 2000, reduced the authorized level for FY 2001 by \$25 million. The purpose of the additional E&T funding is to enable State agencies to create additional education, training, and workfare opportunities that permit ABAWDs subject to the 3-month time limit to remain eligible. By providing State agencies with the resources to create more opportunities, the additional Balanced Budget Act funding will help insure that it is only those individuals who deliberately choose not to satisfy the program's work requirements who lose their eligibility and not those who are willing to work but cannot find opportunities to do so.

In the September 3, 1999, interim rulemaking, the Department amended Food Stamp Program regulations at § 273.7 to implement the requirements of the Balanced Budget Act. In this final rule we are addressing only those amendments that received comment. Provisions of the interim rulemaking that received no comment are adopted as final without change.

#### *Allocation of E&T Grants*

Prior to the enactment of the Balanced Budget Act, the regulation at 7 CFR 273.7(d)(1)(i)(A) required that nonperformance based 100 percent Federal E&T funding be allocated among State agencies based on the number of work registrants in each State relative to the total number of work registrants nationwide. To target Federal E&T funding toward serving ABAWDs subject to the 3-month time limit, the Balanced Budget Act amended section 16(h)(1) of the Food Stamp Act to require that, in FY 1999 through FY 2002, E&T funding be allocated to State agencies based on (1) changes in each State's food stamp caseload; and (2) each State's portion of food stamp recipients who are not eligible for an exception to the time limit under section 6(o)(3) of the Food Stamp Act and who do not reside in an area of the State granted a waiver of the ABAWD work requirement under section 6(o)(4) of the Food Stamp Act, or who do reside in an area of the State granted a waiver of the ABAWD work requirement under section 6(o)(4) of the Food Stamp Act if the State agency provides E&T services in the area to food stamp recipients who are subject to the work requirement. The interim rulemaking amended the regulations at 7 CFR 273.7(d)(1)(i)(C) to describe the new procedures for allocating 100 percent Federal E&T funding.

Prior to the Balanced Budget Act, the regulation at 7 CFR 273.7(d)(1)(i)(A)

required that FNS, using work registrant data from the most recent fiscal year, allocate nonperformance based 100 percent Federal E&T funding on the basis of work registrants in each State as a percentage of work registrants nationwide. Section 1002 of the Balanced Budget Act amended section 16(h) of the Food Stamp Act to require that, for purposes of determining each State agency's allocation of 100 percent Federal E&T funds in a fiscal year, FNS estimate the portion of food stamp recipients residing in each State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act using the 1996 Quality Control survey data. The interim rulemaking amended the regulation at 7 CFR 273.7(d)(1)(i)(D) to incorporate this requirement.

Prior to enactment of the Balanced Budget Act, the regulation at 7 CFR 273.7(d)(1)(i)(B) required that each State agency receive a minimum of \$50,000 in 100 percent Federal E&T funding each fiscal year. The Balanced Budget Act left this requirement unchanged. However, the interim rulemaking amended the regulation at 7 CFR 273.7(d)(1)(i)(E) to revise the manner in which the minimum allocation is to be calculated.

Prior to enactment of the Balanced Budget Act, the regulation at 7 CFR 273.7(d)(1)(i)(D) authorized FNS, with the concurrence of the State agencies involved, to adjust the level of E&T grants during a fiscal year to move funds unlikely to be used by State agencies and reallocate them to State agencies that could use the funds more productively. The Balanced Budget Act contains the same authority, but it amended section 16(h)(1)(C) of the Food Stamp Act to authorize FNS to reallocate unexpended funds in the fiscal year in which they were allocated or in the subsequent fiscal year. The interim rule amended the regulation at 7 CFR 273.7(d)(1)(i)(F) to incorporate this authorization.

One commenter suggested that waivers exempting ABAWDs from the work requirement should be approved or denied before the allocation of funding for the E&T program. The Department does not agree with this suggestion. We act promptly on all ABAWD waivers. They are generally approved within 60 days of being submitted, and they are extended for no more than 1 year. The waiver cycle began after passage of PRWORA in August 1996. From the date on which the State agency submitted its request, the waiver would expire in approximately 1 year and 60 days. The waiver process is not associated with the E&T allocation. State agencies can monitor the employment situation in

their States and if they think it is warranted, they can ask for waivers outside of their existing cycle. However, FNS will ensure that all waivers granted in a reasonable time before the E&T allocations are computed will be considered in the computation.

#### *Use of Funds*

The Balanced Budget Act amended section 16(h) of the Food Stamp Act to require that not less than 80 percent of a State agency's 100 percent Federal E&T allocation each fiscal year—both the base and additional Balanced Budget Act allocations—be used during the fiscal year to serve food stamp recipients not eligible for an exception under section 6(o)(3) of the Food Stamp Act who are placed in and comply with a program described in subparagraph (B) or (C) of section 6(o)(2) of the Food Stamp Act. The interim rule added a new section, designated 7 CFR 273.7(d)(1)(ii) to the regulations. The new section, titled "Use of Funds," contains the requirements for State agency use of 100 percent Federal E&T funding established by the Balanced Budget Act.

Section 7 CFR 273.7(d)(1)(ii) requires that not less than 80 percent of the 100 percent Federal funds a State agency receives in a fiscal year be used to serve ABAWDs subject to the 3-month time limit who are placed in and comply with a qualifying work program for at least 20 hours a week or a workfare program as described in 7 CFR 273.7(m) or a comparable program. "Work program" is defined as an education or training activity operated under title I of the WIA (which replaces the Job Training Partnership Act (JTPA) effective July 1, 2000); section 236 of the Trade Act; or an E&T program operated or supervised by a State or a political subdivision of a State that meets standards approved by the Governor of the State, including the Food Stamp E&T Program, other than a job search or job search training program.

Section 7 CFR 273.7(d)(1)(ii) provides that the remaining 20 percent of a State agency's 100 percent Federal E&T grant may be used to provide work activities for food stamp recipients who meet one of the criteria for exception in section 6(o)(3) of the Food Stamp Act, or on work activities that do not qualify either as work or workfare programs, such as job search or job search training programs for any food stamp recipient.

Section 7 CFR 273.7(d)(1)(ii) also provides that, if a State agency spends more than 20 percent of the 100 percent Federal E&T funds it receives in a fiscal year to provide work activities for food stamp recipients who are eligible for an

exception under section 6(o)(3) of the Food Stamp Act, or on activities that do not qualify either as work or workfare programs under sections 6(o)(2)(B) and (C) of the Food Stamp Act, the allowable costs incurred that are in excess of the 20 percent threshold will be reimbursed at the normal administrative 50–50 match rate.

Several commenters maintained that the final regulation should make clear that, under some circumstances, job search or job search training can be qualifying activities for ABAWDs. The Department agrees. Language has been added to 7 CFR 273.7(d)(1)(ii) in this final rulemaking to clarify that: (1) Job search and job search training programs operated under title I of the WIA or under section 236 of the Trade Act do meet the definition of work program; (2) job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components; and (3) a job search period of up to 30 days following initial certification prior to making a workfare assignment is part of the workfare assignment, and not a job search "program."

One commenter pointed out that section 7(j) of the Food Stamp Act authorizes State agencies to offer State purchase programs to provide benefits for legal immigrants denied eligibility under sections 402 or 403 of PRWORA and ABAWDs who are no longer eligible to participate in the FSP because their 3-month time limit was reached. The commenter believes that the regulations should make clear that States may use 100 percent Federal E&T funds to fund work activities for legal immigrants receiving food stamps through such a State purchase program. The Department disagrees. State purchase program participants receive food stamp benefits that are paid for with State money and are not considered Federal food stamp recipients. As provided in section 7(j)(6) of the Food Stamp Act, administrative and other costs incurred in issuing a benefit under the State purchase program are not eligible for Federal funding.

Except for the addition of the clarification noted above, the Department is publishing this provision in the final rulemaking as it was issued in the interim rule.

#### *Component Costs*

The Department is taking the opportunity in this final rule to eliminate the reimbursement rate structure currently in effect. The rate structure, which represented the

maximum amount that FNS would reimburse State agencies for the costs of creating qualifying opportunities for ABAWDs to remain eligible, was initiated in the interim rule.

Section 1002 of the Balanced Budget Act amended section 16(h)(1) of the Food Stamp Act to require FNS to monitor State agency expenditures of 100 percent Federal E&T funding, including the costs of individual components of State E&T programs. The Balanced Budget Act also provided FNS the discretion to set reimbursable costs for individual components of State E&T programs, making sure that the amount spent or planned to be spent on the components reflect the reasonable cost of efficiently and economically providing components appropriate to recipients' employment and training needs.

The interim rulemaking amended food stamp regulations to add a new section that contained requirements regarding E&T components costs. The new section was designated section 273.7(d)(1)(iv) and titled "Component Costs."

FNS determined that setting reimbursement rates for E&T activities was necessary to promote the intent of the increased E&T funding, which was to create a sufficient number of work opportunities, or "slots," so that as many ABAWDs that wished to work could be given the opportunity to do so before losing eligibility for the program. FNS believed that use of the reimbursement rates would help ensure that the maximum number of slots was created with the available funds, thus potentially keeping as many ABAWDs as possible eligible for the program.

The reimbursement rates—\$30 for an offered work slot and \$175 for a filled work slot—represented FNS's estimate of the reasonable cost of efficiently and economically providing work slots. The rates applied to all 100 percent Federal E&T funds that a State spent to provide qualifying activities that met the work requirement for ABAWDs, including those who reside in areas of a State granted a waiver under section 6(o)(4) of the Food Stamp Act and those granted an exemption from the requirement under section 6(o)(6) of the Food Stamp Act.

To provide State agencies greater flexibility to meet the intent of the increased funding provided under the Balanced Budget Act, FNS offered State agencies the opportunity to test an alternative to the reimbursement rates. Under the alternative, a participating State agency was permitted to spend its 100 percent Federal E&T allocation without regard to the slot rates if the

State agency guaranteed to offer a qualifying education, training, or workfare opportunity to every ABAWD applicant and recipient who exhausted the 3-month food stamp time limit, who did not reside in an area of the State in which the ABAWD work requirement was waived, and who was not exempt from the ABAWD work requirement under each State agency's 15 percent exemption allowance in accordance with section 6(o)(6) of the Food Stamp Act. By fiscal year 2001 13 State agencies were operating under the alternative.

Numerous commenters stated their belief that the reimbursement rates established by FNS are too low and actually discourage—rather than encourage—State agencies from spending 100 percent Federal E&T money. They stated that the reimbursement rates make it impossible to effectively operate an E&T program. Unless the State can provide up front funding, no public or private non-profit agency can operate a program with the restricting \$175 cost per participating client.

Now that FNS has had the opportunity for further consideration of this issue, we believe that the reimbursement rate structure has constrains State agencies' ability to serve ABAWDs effectively in State E&T programs and should be eliminated. This will allow State agencies to fully utilize the funds available to them to create opportunities for ABAWDs that meet PRWORA work requirements or that go beyond the requirements in PRWORA but help ABAWDs become and stay employed. Such opportunities could include expanded vocational training activities that are more expensive than normal, and post secondary education in subject areas directly related to employment. Because the law requires that 80 percent of all E&T funds either be earmarked for ABAWDs or returned to FNS for reallocation, the intent of the Act—efficiently and economically providing ABAWDs the opportunity to remain eligible-would continue to be met, and adequate funding would remain available for use by State agencies.

However, FNS will closely monitor State agency spending of 100 percent Federal E&T funds. We will pay particular attention to State agency estimates of component costs, as detailed in State E&T plans. We will compare those estimates with prior expenditures, keeping in mind variations among State agencies and the characteristics of the individuals to be served, as well as the components offered. In addition, we will utilize

expenditure and program data reported by State agencies to track component costs throughout the fiscal year. In this manner, FNS will ensure that planned and actual expenditures continue to reflect reasonable costs of providing services.

The Department is amending in this final rulemaking the language of 7 CFR 273.7(d)(1)(iv) as published in the September 3, 1999 interim rule to eliminate the requirement for a reimbursement rate structure.

#### Work Supplementation Program

Section 849 of PRWORA amended section 16(b) of the Food Stamp Act (7 U.S.C. 2025(b)) to give State agencies the option to implement work supplementation (or support) programs. In these programs the cash value of public assistance benefits, plus FSP benefits, is provided to an employer as a wage subsidy to be used for hiring and employing public assistance recipients. The goal of work supplementation is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into non-subsidized jobs.

The Department proposed to add, at 7 CFR 273.7, a new paragraph (l), containing requirements for the work supplementation or support program.

We further proposed to add a new paragraph (d)(xiv) under 7 CFR 272.2, *Plan of operation*, that contains the requirement for a planning document from each State agency that operates a work supplementation program.

The Department also solicited comments in the following areas that were not mandated by PRWORA but are necessary to comply with other laws or for accounting and reporting purposes.

- States must ensure that work supplemented or supported employees are treated the same as other non-subsidized employees and that all subsidized positions comply with the Fair Labor Standards Act.

- States must outline State agency, employer and recipient obligations and responsibilities in the proposed work supplementation program. They must also describe procedures for providing wage subsidies to participating employers and for monitoring the use of the funds.

- At the same time the plan is submitted for approval, the State must also submit an operating budget for the proposed program. Additionally, before the plan is approved, the State must agree to comply with certain reporting and monitoring requirements. State agencies operating work supplementation and support programs are required to comply with all FNS

reporting requirements, including reporting the amount of benefits contributed to all employers as a wage subsidy on the FNS 388. State Issuance and Participation Estimates; FNS-388A, Participation and Issuance Project Area; FNS-46. Issuance Reconciliation Report; and SF-269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS-366A, Budget Projection and SF-269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

- The proposed rule asked States to include in their plan amendments whether food stamp allotments and public assistance grants will be frozen at the time a recipient begins a subsidized job. The Department was particularly interested in public comments on the desirability of a Federal standard for issuing supplemental allotments when earnings unexpectedly fall and, secondly, whether there should be a time limit on freezing benefit levels (i.e., not counting any unsubsidized wages from the employer).

- Once the work supplementation program plan is approved, the State agency must incorporate it into the State Plan of Operation and include its operating budget in the State agency budget. After approval, the Department will pay the cash value of a recipient's food stamp benefits to the State agency so they may be paid directly to an employer as a wage subsidy. The State agency will also be reimbursed for administrative costs related to the operation of the work supplementation program as provided by Section 16 of the Food Stamp Act.

- For Quality Control purposes, cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

Section 273.7(l)(i)(H) provides that wages paid under a wage supplementation or support program must meet the requirements of the Fair Labor Standards Act. One commenter pointed out that a wide range of other employment laws beyond the Fair Labor Standards Act will also apply. The Department agrees and has amended this provision to indicate that wages paid under a wage supplementation or support program must meet the requirements of the Fair Labor Standards Act and other applicable employment laws.

No other germane comments concerning the proposed work supplementation or support program

provision were received. Aside from the clarification noted above, the Department is adopting in this final rulemaking the revisions as proposed.

#### Workfare

Since 1982 the Department has afforded State agencies and political subdivisions the option to establish a workfare program. In workfare, nonexempt food stamp household members are required to accept public service job offers and work in return for the household's food stamp allotment. The number of hours of work required of a household member is calculated by dividing the household's monthly benefit by the higher of the applicable Federal or State minimum wage.

Under current rules, household members subject to the work registration requirements of 7 CFR 273.7(a) may also be subject to workfare. Additionally, recipients of benefits under title IV-A may be subject to workfare if they are currently involved less than 20 hours a week in title IV-A work activities and are not otherwise exempt. Applicants for, or recipients of, unemployment compensation may also be subject to workfare.

Workfare is a household responsibility. Legislative history (Conference Report No. 97-290 on the Agriculture and Food Act of 1981, December 10, 1981, page 226) established Congressional intent that the household's workfare responsibility be shared by all nonexempt members: "Upon a household member's failure to comply with workfare requirements, the household would be ineligible for food stamps \* \* \*, unless someone in the household satisfies all outstanding workfare obligations. \* \* \*" Failure of a household to comply with workfare requirements without good cause results in the disqualification of the entire household until the workfare obligation is met, or for two months, whichever is less.

The workfare provisions of section 20 (7 U.S.C. § 2029) of the Food Stamp Act entitle a political subdivision operating a workfare program to share in the benefit reductions that occur when a workfare participant begins employment while engaged in workfare for the first time, or within 30 days of ending the first participation in workfare. This provision is available only for workfare programs operated under section 20.

Workfare may also be offered as a component of a State agency's E&T program. However, workfare savings are not available for E&T workfare components.

State agencies and political subdivisions may also operate workfare

programs in which participation by food stamp recipients is voluntary. In a voluntary program, disqualification for failure to comply does not apply. The number of hours of work will be negotiated between the volunteer household and the agency operating the workfare program.

Section 815 of PRWORA amended section 20 of the Food Stamp Act to: (1) eliminate the requirement for conformance with workfare programs under title IV-A; (2) eliminate the provision for combining the food stamp and title IV-A assistance grants to determine the number of hours a title IV-A food stamp household can be required to participate in a community work experience program established under section 409 of the Social Security Act; and (3) conform disqualification penalties for failure to comply with workfare requirements with those under section 6(d)(1) of the Food Stamp Act. Thus, while still a household responsibility, State agencies have the option of disqualifying the individual or, if the individual is a head of household, the entire household.

The Department proposed to amend 7 CFR 273.22 to incorporate PRWORA changes as well as making other technical corrections.

Lastly, in keeping with the Department's ongoing regulation streamlining and reform initiative, and to create a more logical union of food stamp work requirements and the optional workfare program, we proposed to move the amended 7 CFR 273.22 to 7 CFR 273.7, *Work provisions*, and to designate it paragraph (m), *Optional workfare program*.

One commenter asked for a clarification of the language in 273.7(m)(2)(i): Do the rules under section (m) apply to workfare programs operated as a component of a State agency's E&T program and those operated independently, or only those operated independently? A food stamp workfare program may be operated as a component of a State agency's E&T program. However, certain rules governing optional workfare programs operated under section 20 of the Food Stamp Act do not apply. For instance, the sharing of workfare savings authorized under section 20(g) of the Food Stamp Act are not available for E&T workfare components. Likewise, State agencies may not use any portion of their annual 100 percent Federal E&T grants to fund the administration of optional workfare programs under section 20 of the Food Stamp Act. They can, however, use their grants to fund the operation of workfare components in their E&T programs.

To ensure clarity in the final rulemaking, the Department is redesignating section 273.7(e)(1)(iii) as 273.7(e)(1)(iii)(A) and adding a new subparagraph, 273.7(e)(1)(iii)(B), to read: "The sharing of workfare savings authorized under section 20(g) of the Food Stamp Act and detailed at paragraph (m)(7)(iv) of this section are not available for E&T workfare components."

Further, the Department is adding the following statement to the end of 273.7(m)(7)(i): "State agencies must not use any portion of their annual 100 percent Federal E&T allocations to fund the administration of optional workfare programs under section 20 of the Food Stamp Act and this subparagraph (m)."

### 15 Percent Exemption

#### Background

Section 1001 of the Balanced Budget Act amended section 6(o) of the Food Stamp Act to allow State agencies to provide an exemption from the 3-month ABAWD food stamp time limit to cover up to 15 percent of their ABAWDs who would otherwise be ineligible because of the limit. These "covered individuals," as defined in section 6(o)(6)(ii) of the Food Stamp Act, are food stamp recipients, or applicants denied food stamps because they have exhausted their 3 months of eligibility, who: (1) Are not eligible for an exception to the ABAWD work requirement; (2) are not covered by a waiver of the ABAWD work requirement; (3) are not already complying with the ABAWD work requirement; (4) are not receiving food stamps during their 3 months of eligibility authorized under the time limit; or (5) are not receiving food stamps during a subsequent period after reestablishing eligibility by complying with the requirements of section 6(o)(5) of the Food Stamp Act.

Section 1001 of the Balanced Budget Act authorizes the Secretary to estimate the number of covered individuals in a State based on FY 1996 Quality Control data and other factors appropriate due to the timing and the limitations of the data. The Secretary is also authorized to: (1) Adjust the number of exemptions each fiscal year to reflect changes in the State's caseload and changes in the proportion of the State's food stamp caseload covered by the ABAWD-related waivers; (2) adjust the number of exemptions estimated for a State during a fiscal year if the number of food stamp recipients in the State varies from the State's caseload by more than 10 percent; (3) adjust the number of exemptions assigned for a current fiscal

year based on the actual number of exemptions granted by the State agency in the preceding fiscal year; and (4) require whatever State agency reports determined necessary to ensure compliance with the 15 percent exemption provisions. The Department has no discretion in implementing this provision.

Because of the many requirements of PRWORA and the Balanced Budget Act that apply only to ABAWDs and the 3-month time limit, the Department created, in the interim rule, a new regulatory section, section 273.24, in which it incorporated the Balanced Budget Act provisions regarding the 15 percent exemptions.

#### Determining How To Use the Exemptions

In the interim rule the Department did not prescribe how State agencies must use the exemption authority. State agencies have maximum flexibility to apply the exemptions as they deem appropriate. However, in the preamble to the interim rule, the Department did remind State agencies that, along with the flexibility they are afforded in terms of determining the exemption criteria, they have the responsibility for developing exemption policies that comport with their number of exemptions.

#### Covered Individuals

In the interim rule, the Department clarified that it is up to the State agency to decide whether or not to require an ABAWD to exhaust the 3-month time limit (either the initial 3 months or the subsequent 3 months) in order to qualify for an exemption under this provision. For example, if a State agency has a sufficient number of 15 percent exemptions available, it may choose to exempt all ABAWDs residing in an area not already waived under 6(o)(4) regardless of whether they have exhausted their first or second 3 months. Conversely, a State agency may determine that the best way to manage its finite number of 15 percent exemptions is to require individuals to exhaust their 3 months of eligibility before being exempted under this provision.

#### Determining the Number of Exemptions

The interim rule provided that a State agency may exempt up to 15 percent of their covered individuals. The number of exemptions allotted each State will reflect changes in the State's caseload and the proportion of ABAWDs covered by waivers granted under paragraph 6(o)(4) of the Food Stamp Act.

The interim rule further provided that FNS will adjust the estimated number of covered individuals estimated for a State during a fiscal year if the number of actual food stamp recipients in the State varies by more than 10 percent, as determined by the FNS.

Lastly, the interim rule authorized FNS to adjust the number of exemptions allocated to a State agency for a fiscal year based on the difference between the average monthly number of exemptions in effect in the State for the preceding fiscal year and the average monthly number of exemptions estimated for the State agency for the preceding fiscal year. If more exemptions are used than authorized in a fiscal year, the State's allocation for the next year will be reduced. If the State agency does not use all of its exemptions by the end of the fiscal year, FNS will increase by the remaining balance the estimated number of exemptions allocated to the State agency for the subsequent fiscal year.

#### Reporting

The interim rule required State agencies to track and report the number of cases exempt under the 15 percent criteria used each month to their respective FNS regional offices on a quarterly basis.

All commenters agreed with allowing maximum flexibility in using the exemption.

One commenter stated that in calculating the number of people living in areas where there is no ABAWD waiver due to insufficient jobs or high unemployment, the Department should take special care to avoid overestimating the number of people in waived parts of counties that contain only some waived communities. They believe the Department should develop and release a clear, reliable methodology for calculating the fraction of a county's recipients that are covered by an ABAWD waiver.

The Department is currently exploring ways to improve the estimates of the proportions of an area that have received waivers. For example, we have been working to modify the QC file to enable it to both identify cases in the file that should be classified as ABAWDs, and to determine whether those cases either live in a waived area, or are subject to other exemptions. The effort is ongoing, and we will continue to welcome technical contributions in this area.

One commenter suggested that the Department should make technical assistance available to help States identify simple, easily administered options for using the exemptions, such

as extending the number of months of benefits a household may receive within a 36-month period, reducing the number of months (from 36) required for a household's "clock" to recharge, or exempting readily identifiable demographic groups (such as those over age 40 or 45). The Department has provided guidance to the State agencies regarding use of exemptions in the form of policy memoranda. At the same time, regional offices are working very closely with State agencies to identify the best way to use the exemptions and to share information on what other State agencies are doing.

Another commenter suggested that the Department should allow States to rely upon estimates of the effects of its 15 percent exemption policy as an alternative to counting the actual number of exemptions provided each month. The Department will not make a change to this provision. Because of the statutory 15 percent limit on exemptions the Department must require an accurate accounting of how many exemptions State agencies use. Likewise, States agencies need to accurately record the numbers of individuals exempt under this provision in order to comply with the statute.

Publication of an associated final rulemaking added to and revised § 273.24. Additionally, corrections have made to the language of the original interim rule. Thus, the Department is taking this opportunity to publish the 15 percent ABAWD exemption provision in its final form.

**List of Subjects**

*7 CFR 271*

Administrative practice and procedures, Food stamps, Grant programs-social programs.

*7 CFR 272*

Administrative practice and procedures, Food stamps, Grant programs-social programs.

*7 CFR 273*

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

*7 CFR 275*

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

*7 CFR 277*

Administrative practice and procedures, Food stamps, Fraud, Grant Programs, Social Programs, Penalties.

Accordingly, 7 CFR parts 271, 272, 273, 275, and 277 are amended as follows:

1. The authority citation for parts 271, 272, 273, 275, and 277 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036

**PART 271—GENERAL INFORMATION AND DEFINITIONS**

2. In § 271.2:

a. The definition of "Base of eligibles" is removed.

b. The definition of "Exempted" is amended by removing the reference to "§ 273.7(f)" and adding in its place a reference to "§ 273.7(e)."

c. The definition of "Placed in an employment and training (E&T) program" is revised.

The revision reads as follows:

**§ 271.2 Definitions.**

\* \* \* \* \*

*Placed in an employment and training (E&T) program* means a State agency may count a person as "placed" in an E&T program when the individual commences a component.

\* \* \* \* \*

3. In § 271.8, amend the table of OMB assigned control numbers by:

a. Removing the entry for "273.7(a), (d), (f)" and adding in its place an entry for "273.7(a), (d), (e)."

b. Removing the entry for "273.7(g)" and adding in its place an entry for "273.7(f)."

c. Adding a new entry "273.7(m)" after the newly amended entry for "273.7(f)."

d. Removing the entry for "273.22(b), (c), (d), (e), (f), (g)."

The addition reads as follows:

**§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.**

7 CFR section where requirements are described	Current OMB control no.
* * * * *	*
273.7(m) .....	0584–0285
* * * * *	*

**PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES**

4. In § 272.1, add paragraph (g)(166) to read as follows:

**§ 272.1 General terms and conditions.**

\* \* \* \* \*

(g) \* \* \*

(166) *Amendment No. 393.* The provisions of Amendment No. 393, regarding the Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are effective August 19, 2002.

5. In § 272.2:

a. Paragraph (d)(1)(v) is amended by removing the reference to "§ 273.7(c)(4) and (5)" and adding in its place a reference to "§ 273.7(c)(6)."

b. New paragraphs (d)(1)(xiv) and (d)(1)(xv) are added.

c. Paragraph (e)(9) is amended by removing the reference to "§ 273.7(c)(5)" and adding in its place a reference to "§ 273.7(c)(7)."

The additions read as follows:

**§ 272.2 Plan of operation.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(xiv) The State agency's disqualification plan, in accordance with § 273.7(f)(3) of this chapter.

(xv) If the State agency chooses to implement the provisions for a work supplementation or support program, the work supplementation or support program plan, in accordance with § 273.7(l)(1) of this chapter.

\* \* \* \* \*

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

6. In § 273.1:

a. Paragraph (b)(7)(iv) is removed and paragraphs (b)(7)(v), (b)(7)(vi), (b)(7)(vii), (b)(7)(viii), (b)(7)(ix), (b)(7)(x), (b)(7)(xi), and (b)(7)(xii) are redesignated as (b)(7)(iv), (b)(7)(v), (b)(7)(vi), (b)(7)(vii), (b)(7)(viii), (b)(7)(ix), (b)(7)(x) and (b)(7)(xi) respectively.

b. The first sentence of paragraph (d)(2) is revised.

The revision reads as follows:

**§ 273.1 Household concept.**

\* \* \* \* \*

(d) \* \* \*

(2) For purposes of failure to comply with the work requirements of § 273.7, the head of household shall be the principal wage earner unless the household has selected an adult parent of children as specified in paragraph (d)(1) of this section. \* \* \*

\* \* \* \* \*

**§ 273.5 [AMENDED]**

7. In § 273.5, paragraph (b)(11)(iv) is amended by removing two references to "§ 273.7(f)(1)" and adding in their places a reference to "§ 273.7(e)(1)."

8. § 273.7 is revised to read as follows:



**§ 273.7 Work provisions.**

(a) *Work requirements.* (1) As a condition of eligibility for food stamps, each household member not exempt under paragraph (b)(1) of this section must comply with the following Food Stamp Program work requirements:

(i) Register for work or be registered by the State agency at the time of application and every 12 months after initial registration. The member required to register need not complete the registration form.

(ii) Participate in a Food Stamp Employment and Training (E&T) program if assigned by the State agency, to the extent required by the State agency;

(iii) Participate in a workfare program if assigned by the State agency;

(iv) Provide the State agency or its designee with sufficient information regarding employment status or availability for work;

(v) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (h) of this section;

(vi) Accept a bona fide offer of suitable employment, as defined in paragraph (h) of this section, at a site or plant not subject to a strike or lockout, at a wage equal to the higher of the Federal or State minimum wage or 80 percent of the wage that would have governed had the minimum hourly rate under section 6(a)(1) of the Fair Labor Standards Act been applicable to the offer of employment.

(vii) Do not voluntarily and without good cause quit a job of 30 or more hours a week or reduce work effort to less than 30 hours a week, in accordance with paragraph (j) of this section.

(2) The Food and Nutrition Service (FNS) has defined the meaning of "good cause," and "voluntary quit," and "reduction of work effort" as used in paragraph (a)(1)(vii) of this section. See paragraph (i) of this section for a discussion of good cause; see paragraph (j) of this section for a discussion of voluntary quit and reduction of work effort.

(3) Each State agency will determine the meaning of any other terms used in paragraph (a)(1) of this section; the procedures for establishing compliance with Food Stamp Program work requirements; and whether an individual is complying with Food Stamp Program work requirements. A State agency must not use a meaning, procedure, or determination that is less restrictive on food stamp recipients than is a comparable meaning, procedure, or

determination under the State agency's program funded under title IV-A of the Social Security Act.

(4) Strikers whose households are eligible under the criteria in § 273.1(e) are subject to Food Stamp Program work requirements unless they are exempt under paragraph (b)(1) of this section at the time of application.

(5) State agencies may request approval from FNS to substitute State or local procedures for work registration for PA households not subject to the work requirements under title IV of the Social Security Act or for GA households. However, the failure of a household member to comply with State or local work requirements that exceed the requirements listed in this section must not be considered grounds for disqualification. Work requirements imposed on refugees participating in refugee resettlement programs may also be substituted, with FNS approval.

(6) Household members who are applying for SSI and for food stamps under § 273.2(k)(1)(i) will have Food Stamp Program work requirements waived until they are determined eligible for SSI and become exempt from Food Stamp Program work requirements, or until they are determined ineligible for SSI, at which time their exemptions from Food Stamp Program work requirements will be reevaluated.

(b) *Exemptions from work requirements.* (1) The following persons are exempt from Food Stamp Program work requirements:

(i) A person younger than 16 years of age or a person 60 years of age or older. A person age 16 or 17 who is not the head of a household or who is attending school, or is enrolled in an employment training program, on at least a half-time basis, is also exempt. If the person turns 16 (or 18 under the preceding sentence) during a certification period, the State agency must register the person as part of the next scheduled recertification process, unless the person qualifies for another exemption.

(ii) A person physically or mentally unfit for employment. For the purposes of this paragraph (b), a State agency will define physical and mental fitness; establish procedures for verifying; and will verify claimed physical or mental unfitness when necessary. However, the State agency must not use a definition, procedure for verification, or verification that is less restrictive on food stamp recipients than a comparable meaning, procedure, or determination under the State agency's program funded under title IV-A of the Social Security Act.

(iii) A person subject to and complying with any work requirement under title IV of the Social Security Act. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption.

(iv) A parent or other household member responsible for the care of a dependent child under 6 or an incapacitated person. If the child has his or her 6th birthday during a certification period, the State agency must work register the individual responsible for the care of the child as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(v) A person receiving unemployment compensation. A person who has applied for, but is not yet receiving, unemployment compensation is also exempt if that person is complying with work requirements that are part of the Federal-State unemployment compensation application process. If the exemption claimed is questionable, the State agency is responsible for verifying the exemption with the appropriate office of the State employment services agency.

(vi) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(vii) An employed or self-employed person working a minimum of 30 hours weekly or earning weekly wages at least equal to the Federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farm workers under contract or similar agreement with an employer or crew chief to begin employment within 30 days (although this will not prevent individuals from seeking additional services from the State employment services agency). For work registration purposes, a person residing in areas of Alaska designated in § 274.10(a)(4)(iv) of this chapter, who subsistence hunts and/or fishes a minimum of 30 hours weekly (averaged over the certification period) is considered exempt as self-employed. An employed or self-employed person who voluntarily and without good cause reduces his or her work effort and, after the reduction, is working less than 30 hours per week, is ineligible to participate in the Food Stamp Program under paragraph (j) of this section.

(viii) A student enrolled at least half-time in any recognized school, training program, or institution of higher education. Students enrolled at least half-time in an institution of higher education must meet the student eligibility requirements listed in § 273.5. A student will remain exempt during normal periods of class attendance, vacation, and recess. If the student

graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), the State agency must work register the individual, unless the individual qualifies for another exemption.

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 must register for employment when the change is reported. If the State agency does not use a work registration form, it must annotate the change to the member's exemption status. If a work registration form is used, the State agency is responsible for providing the participant with a work registration form when the change is reported. Participants are responsible for returning the completed form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the participant fails to return the completed form, the State agency must issue a notice of adverse action stating that the participant is being terminated and why, but that the termination can be avoided by returning the form.

(ii) Those persons who lose their exemption due to a change in circumstances that is not subject to the reporting requirements of § 273.12 must register for employment at their household's next recertification.

(c) *State agency responsibilities.* (1) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section. As part of the work registration process, the State agency must explain to the individual the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply. The State agency must provide a written statement of the above to each individual in the household who is registered for work. A notice must also be provided when a previously exempt individual or new household member becomes subject to a work requirement, and at recertification. The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to refer the individual to an E&T program, and if appropriate, referring the individual to an E&T program component. Upon entry into each component, the State agency must inform the participant, either orally or in writing, of the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV—A work program. Such systems must be proposed and explained in the State agency's E&T State Plan.

(3) The State agency must issue a notice of adverse action to an individual, or to a household if appropriate, within 10 days after learning of the individual's noncompliance with Food Stamp Program work requirements. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(4) The State agency must design and operate an E&T program that may consist of one or more or a combination of employment and/or training components as described in paragraph (e)(1) of this section. The State agency must ensure that it is notified by the agency or agencies operating its E&T components within 10 days if an E&T mandatory participant fails to comply with E&T requirements.

(5) Each component of the State agency's E&T program must be delivered through its statewide workforce development system, unless the component is not available locally through such a system.

(6) In accordance with § 272.2(d) and § 272.2(e) of this chapter, the State agency must prepare and submit an E&T Plan to its appropriate FNS Regional Office. The E&T Plan must be available for public inspection at the State agency headquarters. In its E&T Plan, the State agency will detail the following:

(i) The nature of the E&T components the State agency plans to offer and the reasons for such components, including cost information. The methodology for State agency reimbursement for education components must be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State agency that requests 50 percent Federal reimbursement for State agency E&T administrative costs, other than for participant reimbursements, must include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed, including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work. Costs in excess of the Federal grant will be allowed only with the prior approval of FNS and must be adequately documented to assure that they are necessary, reasonable and properly allocated. If the State agency intends to spend the additional E&T grant allocation for which it is eligible in a fiscal year in accordance with paragraph (d)(1)(i)(B) of this section, it must declare its intention to maintain its level of expenditures for E&T and workfare at a level not less than the level of such expenditures in FY 1996;

(iii) The categories and types of individuals the State agency intends to exempt from E&T participation, the estimated percentage of work registrants the State agency plans to exempt, and the frequency with which the State agency plans to reevaluate the validity of its exemptions;

(iv) The characteristics of the population the State agency intends to place in E&T;

(v) The estimated number of volunteers the State agency expects to place in E&T;

(vi) The geographic areas covered and not covered by the E&T Plan and why, and the type and location of services to be offered;

(vii) The method the State agency uses to count all work registrants the first month of each fiscal year;

(viii) The method the State agency uses to report work registrant information on the quarterly Form FNS-583;

(ix) The method the State agency uses to prevent work registrants from being counted twice within a Federal fiscal year. If the State agency universally work registers all food stamp applicants, this method must specify how the State agency excludes those exempt from work registration under paragraph (b)(1) of this section. If the State agency work registers nonexempt participants whenever a new application is submitted, this method must also specify how the State agency excludes those participants who may have already been registered within the past

12 months as specified under paragraph (a)(1)(i) of this section;

(x) The organizational relationship between the units responsible for certification and the units operating the E&T components, including units of the statewide workforce development system, if available. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within 10 working days after the noncompliance occurs;

(xi) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services, including organizations in the statewide workforce development system, if available. Copies of contracts must be available for inspection;

(xii) The availability, if appropriate, of E&T programs for Indians living on reservations;

(xiii) If a conciliation process is planned, the procedures that will be used when an individual fails to comply with an E&T program requirement. Include the length of the conciliation period; and

(xiv) The payment rates for child care established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and based on local market rate surveys.

(7) The State agency will submit its E&T Plan biennially, at least 45 days before the start of the Federal fiscal year. The State agency must submit plan revisions to the appropriate FNS regional office for approval if it plans to alter the nature or location of its components or the number or characteristics of persons served. The proposed changes must be submitted for approval at least 30 days prior to planned implementation.

(8) The State agency will submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State agency from participation in E&T;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component, including Food Stamp Program applicants if the State agency chooses to operate a component for applicants;

(v) Able-bodied adults without dependents (ABAWDs) subject to the 3-month food stamp time limit imposed in accordance with § 273.24(b) who are exempt under the State agency's 15

percent exemption allowance under § 273.24(g);

(vi) Filled and offered slots created in E&T workfare components or comparable programs that serve ABAWDs subject to the 3-month food stamp time limit. This information must be broken out to show the number of slots created in areas of the State that have received a waiver of the time limit in accordance with § 273.24(f) and in non-waived areas;

(vii) Filled and offered slots created in education and training components or comparable programs that serve ABAWDs subject to the 3-month food stamp time limit. This information must be broken out to show the number of slots created in areas of the State that have received a waiver of the time limit in accordance with § 273.24(f) and in non-waived areas;

(viii) The amount of 100 percent Federal E&T funds spent to create workfare slots that serve ABAWDs subject to the 3-month time limit; and

(ix) The amount of 100 percent Federal E&T funds spent to create education and training slots that serve ABAWDs subject to the 3-month time limit.

(9) The State agency will submit annually, on its first quarterly report:

(i) The number of work registered persons in the State during the period October 1 through October 31 of the new fiscal year, including persons work registered during October; and

(ii) The number of these work registered persons the State agency subsequently exempted from participation in E&T.

(10) The State agency will submit annually, on its final quarterly report, a list of E&T components it offered during the fiscal year and the number of mandatory and volunteer participants placed in each E&T component.

(11) Additional information may be required of the State agency, on an as needed basis, regarding the type of components offered and the characteristics of persons served, depending on the contents of its E&T Plan.

(12) The State agency must ensure, to the maximum extent practicable, that E&T programs are provided for Indians living on reservations.

(13) If a benefit overissuance is discovered for a month or months in which a mandatory E&T participant has already fulfilled a work component requirement, the State agency must follow the procedure specified in paragraph (m)(6)(v) of this section for a workfare overissuance.

(14) If a State agency fails to efficiently and effectively administer its

E&T program, the provisions of § 276.1(a)(4) of this chapter will apply.

(d) *Federal financial participation.* (1) *Employment and training grants.* (i) *Allocation of grants.* Each State agency will receive an E&T program grant for each fiscal year to operate an E&T program. The grant requires no State matching. The grant will consist of a base amount and an additional amount that will be available only to those affected State agencies that elect to meet their maintenance of effort requirements as described in paragraph (d)(1)(iii) of this section.

(A) In determining each State agency's base 100 percent Federal E&T grant amount, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(C) of this section to the total amount of the 100 percent Federal E&T grant provided under section 16(h)(1)(A) of the Food Stamp Act for each fiscal year.

(B) In determining each State agency's additional 100 percent Federal E&T grant amount, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(C) of this section to the total amount of 100 percent Federal E&T grant provided under section 16(h)(1)(A) of the Food Stamp Act for each fiscal year.

(C) Except as otherwise provided in paragraph (d)(1)(i)(F) of this section, Federal funding for E&T grants, including both the base and additional amounts, will be allocated based on the number of ABAWDs in each State not eligible for an exemption under § 273.24(c), who either do not reside in an area subject to a waiver granted in accordance with § 273.24(f) or who do reside in an area subject to a waiver in which the State agency provides E&T services to ABAWDs, as a percentage of such recipients nationwide. FNS will ensure that all waivers granted in accordance with § 273.24(f) in a reasonable time before the E&T allocations are determined will be considered in the determination.

(D) FNS will determine each State's percentage of ABAWDs using FY 1996 Quality Control survey data adjusted for changes in each State's caseload.

(E) No State agency will receive less than \$50,000 in 100 percent Federal E&T funds. To ensure this, FNS will reduce, if necessary, the grant of each State agency allocated more than \$50,000. The reduction will be proportionate to the number of ABAWDs in the State who are not eligible for an exemption under § 273.24(c), and who do not reside in an area subject to a waiver under § 273.24(f) or who do reside in an area subject to a waiver in which the State

agency provides E&T services to ABAWDs as compared to the total number of such recipients in all the State agencies receiving more than \$50,000. FNS will distribute the funds from the reduction to State agencies initially allocated less than \$50,000 so they receive the \$50,000 minimum.

(F) If a State agency will not expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i)(C) of this section, FNS will reallocate the unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year as it considers appropriate and equitable.

(ii) *Use of Funds.* (A) Not less than 80 percent of the funds a State agency receives in a fiscal year under paragraph (d)(1)(i) of this section must be used to serve ABAWDs who are placed in and comply with the requirements of a workfare component in an E&T program described in paragraph (e)(1)(iii) of this section or a comparable program, or to serve ABAWDs participating in qualifying education and training activities for 20 hours or more per week. Qualifying activities are those provided as part of a program operated under the Workforce Investment Act of 1998 (29 U.S.C. 2801 *et seq.*)(WIA), a program under section 236 of the Trade Act of 1974 (19 U.S.C. 2296), or an E&T program operated or supervised by the State agency or a political subdivision that meets standards approved by the Governor of the State, including programs described in paragraphs (e)(1)(iv), (e)(1)(v), (e)(1)(vi) and (e)(1)(vii) of this section. Job search and job search training programs as described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section do not meet the definition of qualifying activities. However, job search and or job search training programs, when operated under title I of the WIA or under section 236 of the Trade Act, do meet the definition of qualifying activities. Further, job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the required time spent in the other components. Lastly, a State agency may establish a job search period of up to 30 days following initial certification prior to making a workfare assignment. This job search activity is part of the workfare assignment, and not a job search "program." Participants are considered to be participating in and complying with the requirements of workfare, thereby meeting the work requirement for ABAWDs.

(B) Funds a State agency receives in a fiscal year under paragraph (d)(1)(i) of this section that are used to serve

ABAWDs who either reside in an area of a State granted a waiver under § 273.24(f) or who have been granted an exemption under § 273.24(g) and that are expended on qualifying ABAWD activities as described in paragraph (d)(1)(ii)(A) of this section count toward a State agency's 80 percent expenditure.

(C) Not more than 20 percent of the funds a State agency receives in a fiscal year under paragraph (d)(1)(i) of this section may be used to serve individuals eligible for an exemption under § 273.24(c) (non-ABAWDs) or on activities that do not meet the definition of qualifying activities as described in paragraph (d)(1)(ii)(A) of this section. E&T funds expended in accordance with this paragraph (d)(1)(ii)(C) may be spent independent of whether or not the State agency expends any Federal funds that meet the requirements of paragraph (d)(1)(ii)(A) of this section.

(D) If at the end of a fiscal year, FNS determines that a State agency has spent more than 20 percent of the Federal E&T funds it received for that fiscal year under paragraph (d)(1)(i) of this section to serve non-ABAWDs or on activities that do not meet the definition of qualifying activities as described in paragraph (d)(1)(ii)(A) of this section, it will reimburse States for allowable costs incurred in excess of the 20 percent threshold at the normal administrative 50/50 match rate.

(E) A State agency must use E&T program grants to fund the administrative costs of planning, implementing and operating its food stamp E&T program in accordance with its approved State E&T plan. E&T grants must not be used for the process of determining whether an individual must be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity that takes place after the operator of an E&T component reports noncompliance without good cause. For purposes of this paragraph (d), the certification process is considered ended when an individual is referred to an E&T component for assessment or participation. E&T grants may also not be used to subsidize the wages of participants, or to reimburse participants under paragraph (d)(3) of this section.

(F) A State agency's receipt of its 100 percent Federal E&T grant is contingent on FNS's approval of the State agency's E&T plan. If an adequate plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved plans. Non-receipt of an E&T grant does not release a State agency from its responsibility

under paragraph (c)(4) of this section to operate an E&T program.

(G) Federal funds made available to a State agency to operate an educational component under paragraph (e)(1)(vi) of this section must not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an E&T program.

(H) In accordance with section 6(d)(4)(K) of the Food Stamp Act, and notwithstanding any other provision of this paragraph (d), the amount of Federal E&T funds, including participant and dependent care reimbursements, a State agency uses to serve participants who are receiving cash assistance under a State program funded under title IV-A of the Social Security Act must not exceed the amount of Federal E&T funds the State agency used in FY 1995 to serve participants who were receiving cash assistance under a State program funded under title IV-A of the Social Security Act.

(1) Based on information provided by each State agency, FNS established claimed Federal E&T expenditures on this category of recipients in fiscal year 1995 for the State agencies of Colorado (\$318,613), Utah (\$10,200), Vermont (\$1,484,913), and Wisconsin (\$10,999,773). These State agencies may spend up to a like amount each fiscal year to serve food stamp recipients who also receive title IV assistance.

(2) All other State agencies are prohibited from expending any Federal E&T funds on title IV cash assistance recipients.

(iii) *Maintenance of Effort.* (A) To be eligible for a grant derived from the additional level of E&T funding described in paragraph (d)(1)(i)(B) of this section, a State agency must maintain State expenditures on E&T programs and optional workfare (if applicable) at a level not less than the level of its expenditures in FY 1996. A State agency need not expend all of its required maintenance of effort funds before it begins spending its additional E&T grant. In accordance with paragraph (c)(6)(ii) of this section, a State agency that intends to spend the additional allocation for which it is eligible in a fiscal year must declare in its State E&T plan for that fiscal year its intention to maintain its expenditures for E&T and optional workfare (if applicable) at a level not less than the level of such expenditures in FY 1996.

(B) State funds that a State agency expends in order to meet its maintenance of effort requirement are not subject to the use of funds requirements of paragraph (d)(1)(ii) of this section.

(C) Participant reimbursements paid with State funds do not count toward a State agency's maintenance of effort requirement, except in the case of optional workfare programs in which reimbursements to participants for work-related expenses are part of the State agency's administrative expenses in accordance with section 20(g)(1) of the Food Stamp Act.

(iv) *Component Costs.* FNS will monitor State agencies' expenditures of 100 percent Federal E&T funds, including the costs of individual components of State agencies' programs, to ensure that planned and actual spending reflects the reasonable cost of efficiently and economically providing E&T services.

(2) *Additional administrative costs.* Fifty percent of all other administrative costs incurred by State agencies in operating E&T programs, above the costs referenced in paragraph (d)(1) of this section, will be funded by the Federal government.

(3) *Participant reimbursements.* The State agency must provide payments to participants in its E&T program, including applicants and volunteers, for expenses that are reasonably necessary and directly related to participation in the E&T program. These payments may be provided as a reimbursement for expenses incurred or in advance as payment for anticipated expenses in the coming month. The State agency must inform each E&T participant that allowable expenses up to the amounts specified in paragraphs (d)(3)(i) and (d)(3)(ii) of this section will be reimbursed by the State agency upon presentation of appropriate documentation. Reimbursable costs may include, but are not limited to, dependent care costs, transportation, and other work, training or education related expenses such as uniforms, personal safety items or other necessary equipment, and books or training manuals. These costs must not include the cost of meals away from home. If applicable, any allowable costs incurred by a noncompliant E&T participant after the expiration of the noncompliant participant's minimum mandatory disqualification period, as established by the State agency, that are reasonably necessary and directly related to reestablishing eligibility, as defined by the State agency, are reimbursable under paragraphs (d)(3)(i) and (d)(3)(ii) of this section. The State agency may

reimburse participants for expenses beyond the amounts specified in paragraphs (d)(3)(i) and (d)(3)(ii) of this section; however, only costs that are up to but not in excess of those amounts are subject to Federal cost sharing. Reimbursement must not be provided from E&T grants allocated under paragraph (d)(1)(i) of this section. Any expense covered by a reimbursement under this section is not deductible under § 273.10(d)(1)(i).

(i) The State agency will reimburse the cost of dependent care it determines to be necessary for the participation of a household member in the E&T program up to the actual cost of dependent care, or the applicable payment rate for child care, whichever is lowest. The payment rates for child care are established in accordance with the Child Care and Development Block Grant provisions of 45 CFR 98.43, and are based on local market rate surveys. The State agency will provide a dependent care reimbursement to an E&T participant for all dependents requiring care unless otherwise prohibited by this section. The State agency will not provide a reimbursement for a dependent age 13 or older unless the dependent is physically and/or mentally incapable of caring for himself or herself or is under court supervision. The State agency must provide a reimbursement for all dependents who are physically and/or mentally incapable of caring for themselves or who are under court supervision, regardless of age, if dependent care is necessary for the participation of a household member in the E&T program. The State agency will obtain verification of the physical and/or mental incapacity for dependents age 13 or older if the physical and/or mental incapacity is questionable. Also, the State agency will verify a court-imposed requirement for the supervision of a dependent age 13 or older if the need for dependent care is questionable. If more than one household member is required to participate in an E&T program, the State agency will reimburse the actual cost of dependent care or the applicable payment rate for child care, whichever is lowest, for each dependent in the household, regardless of the number of household members participating in the E&T program. An individual who is the caretaker relative of a dependent in a family receiving cash assistance under title IV-A of the Social Security Act in a local area where an employment, training, or education program under title IV-A is in operation is not eligible for such reimbursement. An E&T participant is not entitled to the

dependent care reimbursement if a member of the E&T participant's food stamp household provides the dependent care services. The State agency must verify the participant's need for dependent care and the cost of the dependent care prior to the issuance of the reimbursement. The verification must include the name and address of the dependent care provider, the cost and the hours of service (e.g., five hours per day, five days per week for two weeks). A participant may not be reimbursed for dependent care services beyond that which is required for participation in the E&T program. In lieu of providing reimbursements for dependent care expenses, a State agency may arrange for dependent care through providers by the use of purchase of service contracts, by providing vouchers to the household or by other means. A State agency may require that dependent care provided or arranged by the State agency meet all applicable standards of State and local law, including requirements designed to ensure basic health and safety protections (e.g., fire safety). An E&T participant may refuse available appropriate dependent care as provided or arranged by the State agency, if the participant can arrange other dependent care or can show that such refusal will not prevent or interfere with participation in the E&T program as required by the State agency. A State agency may claim 50 percent of actual costs for dependent care services provided or arranged for by the State agency up to the actual cost of dependent care, the applicable payment rate for child care, or the Statewide limit, whichever is lowest.

(ii) The State agency will reimburse the actual costs of transportation and other costs (excluding dependent care costs) it determines to be necessary and directly related to participation in the E&T program up to the maximum level of reimbursement established by the State agency. Such costs are the actual costs of participation unless the State agency has a method approved in its E&T Plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses up to the maximum level of reimbursements established by the State agency. Only costs up to \$25 per participant per month are subject to Federal cost sharing.

(iii) No participant cost that has been reimbursed under a workfare program under paragraph (m)(7)(i) of this section,

title IV of the Social Security Act or other work program will be reimbursed under this section.

(iv) Any portion of dependent care costs that are reimbursed under this section may not be claimed as an expense and used in calculating the dependent care deduction under § 273.9(d)(4) for determining benefits.

(v) The State agency must inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program exceed the allowable reimbursement amount. Persons for whom allowable monthly expenses in an E&T component exceed the amounts specified under paragraphs (d)(3)(i) and (d)(3)(ii) of this section are not required to participate in that component. These individuals will be placed, if possible, in another suitable component in which the individual's monthly E&T expenses would not exceed the allowable reimbursable amount paid by the State agency. If a suitable component is not available, these individuals will be exempt from E&T participation until a suitable component is available or the individual's circumstances change and his/her monthly expenses do not exceed the allowable reimbursable amount paid by the State agency. Dependent care expenses incurred that are otherwise allowable but not reimbursed because they exceed the reimbursable amount specified under paragraph (d)(3)(i) of this section will be considered in determining a dependent care deduction under § 273.9(d)(4).

(4) *Workfare cost sharing.* Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under paragraph (m)(7)(iv) of this section at the 50 percent reimbursement level and reported as such.

(5) *Funding mechanism.* E&T program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of this chapter. The State agency must ensure that records are maintained that support the financial claims being made to FNS.

(6) *Fiscal recordkeeping and reporting requirements.* Total E&T expenditures are reported on the Financial Status Report (SF-269) in the column containing "other" expenses. E&T expenditures are also separately identified in an attachment to the SF-269 to show, as provided in instructions, total State and Federal E&T expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant

reimbursements; State and Federal expenditures for E&T costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and paragraph (m)(7) of this section. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program will be submitted in accordance with paragraph (m)(7)(iv) of this section.

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section.

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency must entail a certain level of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months making job contacts (less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount). However, FNS may approve components that do not meet this guideline if it determines that such components will advance program goals. An initial screening by an eligible worker to determine whom to place in an E&T program does not constitute a component. The State agency may require Food Stamp Program applicants to participate in any component it offers in its E&T program at the time of application. The State agency must not impose requirements that would delay the determination of an individual's eligibility for benefits or in issuing benefits to any household that is otherwise eligible. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24, job search and job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs. However, job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components. An E&T program offered by a State

agency must include one or more of the following components:

(i) A job search program. The State agency may require an individual to participate in job search from the time an application is filed for an initial period established by the State agency. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a job search period that, in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round job search requirement. If a reasonable period of job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive. In accordance with section 6(o)(1)(A) of the Food Stamp Act and § 273.24, a job search program is not a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs. However, such a program, when operated under title I of the WIA, or under section 236 of the Trade Act, is considered a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1) of the Food Stamp Act and § 273.24, a job search program is not a qualifying activity relating to the participation requirements necessary to maintain food stamp eligibility for ABAWDs. However, such a program, when operated under title I of the WIA or under section 236 of the Trade Act, is considered a qualifying activity relating to the participation

requirements necessary to maintain food stamp eligibility for ABAWDs.

(iii) A workfare program as described in paragraph (m) of this section.

(A) The participation requirements of section 20(b) of the Food Stamp Act and paragraphs (m)(5)(i)(A) and (m)(5)(i)(B) of this section for individuals exempt from Food Stamp Program work requirements under paragraphs (b)(1)(iii) and (b)(1)(v) of this section, are not applicable to E&T workfare components.

(B) In accordance with section 20(e) of the Food Stamp Act and paragraph (m)(6)(ii) of this section, the State agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment. This job search activity is part of the workfare assignment, and not a job search "program." Participants are considered to be participating in and complying with the requirements of workfare, thereby meeting the participation requirement for ABAWDs.

(C) The sharing of workfare savings authorized under section 20(g) of the Food Stamp Act and paragraph (m)(7)(iv) of this section are not available for E&T workfare components.

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience must:

(A) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(B) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a WIA or State or local program aimed at accomplishing the purpose of the E&T program.

(vi) Educational programs or activities to improve basic skills or otherwise improve employability including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Allowable educational activities may include, but are not limited to, high school or equivalent educational programs, remedial education programs to achieve a basic literacy level, and instructional programs in English as a second language. Only educational components that directly enhance the employability

of the participants are allowable. A direct link between the education and job-readiness must be established for a component to be approved.

(vii) A program designed to improve the self-sufficiency of recipients through self-employment. Included are programs that provide instruction for self-employment ventures.

(2) *Exemptions.* Each State agency may, at its discretion, exempt individual work registrants and categories of work registrants from E&T participation. Each State agency must periodically reevaluate its individual and categorical exemptions to determine whether they remain valid. Each State agency will establish the frequency of its periodic evaluation.

(3) *Time spent in an employment and training program.* (i) Each State agency will determine the length of time a participant spends in any E&T component it offers. The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an E&T work program (including, but not limited to, those carried out under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section) combined with any hours worked that month in a workfare program under paragraph (m) of this section must not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable Federal or State minimum wage. The total hours of participation in an E&T component for any household member individually in any month, together with any hours worked in a workfare program under paragraph (m) of this section and any hours worked for compensation (in cash or in kind), must not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency must not disqualify voluntary participants in an E&T component for failure to comply with E&T requirements.

(iii) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (e)(3) of this section.

(f) *Failure to comply (1) Ineligibility for failure to comply.* A nonexempt individual who refuses or fails without good cause, as defined in paragraphs (i)(2) and (i)(3) of this section, to comply with the Food Stamp Program work requirements listed under paragraph (a)(1) of this section is ineligible to participate in the Food Stamp Program,

and will be considered an ineligible household member, pursuant to § 273.1(b)(7).

(i) As soon as the State agency learns of the individual's noncompliance it must determine whether good cause for the noncompliance exists, as discussed in paragraph (i) of this section. Within 10 days of establishing that the noncompliance was without good cause, the State agency must provide the individual with a notice of adverse action, as specified in § 273.13. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period.

(ii) The notice of adverse action must contain the particular act of noncompliance committed and the proposed period of disqualification. The notice must also specify that the individual may, if appropriate, reapply at the end of the disqualification period. Information must be included on or with the notice describing the action that can be taken to avoid the disqualification before the disqualification period begins. The disqualification period must begin with the first month following the expiration of the 10-day adverse notice period, unless a fair hearing is requested.

(iii) An E&T disqualification may be imposed after the end of a certification period. Thus, a notice of adverse action must be sent whenever the State agency becomes aware of an individual's noncompliance with Food Stamp Program work requirements, even if the disqualification begins after the certification period expires and the household has not been recertified.

(2) *Disqualification periods.* The following disqualification periods will be imposed:

(i) For the first occurrence of noncompliance, the individual will be disqualified until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) One month; or

(C) Up to three months, at State agency option.

(ii) For the second occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Three months; or

(C) Up to six months, at State agency option.

(iii) For the third or subsequent occurrence, until the later of:

(A) The date the individual complies, as determined by the State agency;

(B) Six months;

(C) A date determined by the State agency; or



(D) At the option of the State agency, permanently.

(3) *Record retention.* In accordance with § 272.1(f) of this chapter, State agencies are required to retain records concerning the frequency of noncompliance with FSP work requirements and the resulting disqualification actions imposed. These records must be available for inspection and audit at any reasonable time to ensure conformance with the minimum mandatory disqualification periods instituted.

(4) *Disqualification plan.* In accordance with § 272.2(d)(1)(xiii) of this chapter, each State agency must prepare and submit a plan detailing its disqualification policies. The plan must include the length of disqualification to be enforced for each occurrence of noncompliance, how compliance is determined by the State agency, and the State agency's household disqualification policy.

(5) *Household ineligibility.* (i) If the individual who becomes ineligible to participate under paragraph (f)(1) of this section is the head of a household, the State agency, at its option, may disqualify the entire household from Food Stamp Program participation.

(ii) The State agency may disqualify the household for a period that does not exceed the lesser of:

(A) The duration of the ineligibility of the noncompliant individual under paragraph (f)(2) of this section; or

(B) 180 days.

(iii) A household disqualified under this provision may reestablish eligibility if:

(A) The head of the household leaves the household;

(B) A new and eligible person joins the household as the head of the household, as defined in § 273.1(d)(2); or

(C) The head of the household becomes exempt from work requirements during the disqualification period.

(iv) If the head of the household joins another household as its head, that household will be disqualified from participating in the Food Stamp Program for the remaining period of ineligibility.

(6) *Fair hearings.* Each individual or household has the right to request a fair hearing, in accordance with § 273.15, to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with Food Stamp Program work requirements. Individuals or households may appeal State agency actions such as exemption status, the type of

requirement imposed, or State agency refusal to make a finding of good cause if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component must receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency must be available through one of these means. A household must be allowed to examine its E&T component casefile at a reasonable time before the date of the fair hearing, except for confidential information (that may include test results) that the agency determines should be protected from release. Confidential information not released to a household may not be used by either party at the hearing. The results of the fair hearing are binding on the State agency.

(7) *Failure to comply with a work requirement under title IV of the Social Security Act, or an unemployment compensation work requirement.* An individual exempt from Food Stamp Program work requirements by paragraphs (b)(1)(iii) or (b)(1)(v) of this section because he or she is subject to work requirements under title IV-A or unemployment compensation who fails to comply with a title IV-A or unemployment compensation work requirement will be treated as though he or she failed to comply with the Food Stamp Program work requirement.

(i) When a food stamp household reports the loss or denial of title IV-A or unemployment compensation benefits, or if the State agency otherwise learns of a loss or denial, the State agency must determine whether the loss or denial resulted when a household member refused or failed without good cause to comply with a title IV-A or unemployment compensation work requirement.

(ii) If the State agency determines that the loss or denial of benefits resulted from an individual's refusal or failure without good cause to comply with a title IV or unemployment compensation requirement, the individual (or household if applicable under paragraph (f)(5) of this section) must be disqualified in accordance with the applicable provisions of this paragraph (f). However, if the noncomplying individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section (other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of this

section) the individual (or household if applicable under paragraph (f)(5) of this section) will not be disqualified.

(iii) If the State agency determination of noncompliance with a title IV-A or unemployment compensation work requirement leads to a denial or termination of the individual's or household's food stamp benefits, the individual or household has a right to appeal the decision in accordance with the provisions of paragraph (f)(6) of this section.

(iv) In cases where the individual is disqualified from the title IV-A program for refusal or failure to comply with a title IV-A work requirement, but the individual meets one of the work registration exemptions provided in paragraph (b)(1) of this section, other than the exemptions provided in paragraphs (b)(1)(iii) and (b)(1)(v) of this section, the State agency may, at its option, apply the identical title IV-A disqualification on the individual under the Food Stamp Program. The State agency must impose such optional disqualifications in accordance with section 6(i) of the Food Stamp Act and with the provisions of § 273.11(1).

(g) *Ending disqualification.* Except in cases of permanent disqualification, at the end of the applicable mandatory disqualification period for noncompliance with Food Stamp Program work requirements, participation may resume if the disqualified individual applies again and is determined by the State agency to be in compliance with work requirements. A disqualified individual may be permitted to resume participation during the disqualification period (if otherwise eligible) by becoming exempt from work requirements.

(h) *Suitable employment.* (1) Employment will be considered suitable unless:

(i) The wage offered is less than the highest of the applicable Federal minimum wage, the applicable State minimum wage, or eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (h)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) The work offered is at a site subject to a strike or lockout at the time

of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(v) It fails to meet additional suitability criteria established by State agencies.

(2) In addition, employment will be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment will not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor will employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs.

(i) *Good Cause.* (1) The State agency is responsible for determining good cause when a food stamp recipient fails or refuses to comply with Food Stamp Program work requirements. Since it is not possible for the Department to enumerate each individual situation that should or should not be considered good cause, the State agency must take into account the facts and circumstances, including information submitted by the employer and by the household member involved, in determining whether or not good cause exists.

(2) Good cause includes circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six but are under age 12.

(3) Good cause for leaving employment includes the good cause provisions found in paragraph (i)(2) of this section, and resigning from a job that is unsuitable, as specified in paragraphs (h)(1) and (h)(2) of this section. Good cause for leaving employment also includes:

(i) Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs;

(ii) Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;

(iii) Acceptance of employment by the individual, or enrollment by the individual in any recognized school, training program or institution of higher education on at least a half time basis, that requires the individual to leave employment;

(iv) Acceptance by any other household member of employment or enrollment at least half-time in any recognized school, training program or institution of higher education in another county or similar political subdivision that requires the household to move and thereby requires the individual to leave employment;

(v) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

(vi) Employment that becomes unsuitable, as specified in paragraphs (h)(1) and (h)(2) of this section, after the acceptance of such employment;

(vii) Acceptance of a bona fide offer of employment of more than 30 hours a week or in which the weekly earnings are equivalent to the Federal minimum wage multiplied by 30 hours that, because of circumstances beyond the individual's control, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the Federal minimum wage multiplied by 30 hours; and

(viii) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of the previous employment must be considered as with good cause if it is part of the pattern of that type of employment.

(4) *Verification.* To the extent that the information given by the household is

questionable, as defined in § 273.2(f)(2), State agencies must request verification of the household's statements. The primary responsibility for providing verification, as provided in § 273.2(f)(5), rests with the household.

(j) *Voluntary quit and reduction of work effort.* (1) *Period for establishing voluntary quit and reduction of work effort.* For the purpose of establishing that a voluntary quit without good cause or reduction in work effort without good cause occurred prior to applying for food stamps, a State agency may, at its option, choose a period between 30 and 60 days before application in which to determine voluntary quit or reduction in work effort.

(2) *Individual ineligibility.* An individual is ineligible to participate in the Food Stamp Program if, in a period established by the State agency between 30 and 60 day before applying for food stamp benefits or at any time thereafter, the individual:

(i) Voluntarily and without good cause quits a job of 30 hours a week or more; or

(ii) Reduces his or her work effort voluntarily and without good cause and, after the reduction, is working less than 30 hours per week.

(3) *Determining whether a voluntary quit or reduction of work effort occurred and application processing.* (i) When a household files an application for participation, or when a participating household reports the loss of a source of income or a reduction in household earnings, the State agency must determine whether any household member voluntarily quit his or her job or reduced his or her work effort. Benefits must not be delayed beyond the normal processing times specified in § 273.2 pending the outcome of this determination.

(ii) The voluntary quit provision applies if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within a period established by the State agency between 30 to 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes of this paragraph (j). An employee of the Federal Government, or of a State or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, will be

considered to have voluntarily quit his or her job without good cause. If an individual quits a job, secures new employment at comparable wages or hours and is then laid off or, through no fault of his own, loses the new job, the individual must not be disqualified for the earlier quit.

(iii) The reduction of work effort provision applies if, before the reduction, the individual was employed 30 hours or more per week; the reduction occurred within a period established by the State agency between 30 and 60 days prior to the date of application or anytime thereafter; and the reduction was voluntary and without good cause. The minimum wage equivalency does not apply when determining a reduction in work effort.

(iv) In the case of an applicant household, the State agency must determine if any household member subject to Food Stamp Program work requirements voluntarily quit his or her job or reduced his or her work effort within a period established by the State agency between 30 and 60 days prior to date of application. If the State agency learns that a household has lost a source of income or experienced a reduction in income after the date of application but before the household is certified, the State agency must determine whether a voluntary quit or reduction in work effort occurred.

(v) Upon determining that an individual voluntarily quit employment or reduced work effort, the State agency must determine if the voluntary quit or reduction of work effort was with good cause as defined in paragraph (i) of this section.

(vi) In the case of an individual who is a member of an applicant household, if the voluntary quit or reduction in work effort was without good cause, the individual will be determined ineligible to participate and will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(7). The disqualification is effective upon the determination of eligibility for the remaining household members. If the individual who becomes ineligible is the head of the household, as defined in § 273.1(d)(2), the State agency may choose to disqualify the entire household, in accordance with paragraph (f)(5) of this section. If the State agency chooses to disqualify the household, the State agency must provide the applicant household with a notice of denial in accordance with § 273.2(g)(3). The notice must inform the household of the

proposed period of disqualification; its right to reapply at the end of the disqualification period; and of its right to a fair hearing. The household's disqualification is effective upon the issuance of the notice of denial.

(vii) In the case of an individual who is a member of a participating household, if the State agency determines that the individual voluntarily quit his or her job or reduced his or her work effort without good cause while participating in the program or discovers that the individual voluntarily quit his or her job or reduced his or her work effort without good cause during a period established by the State agency between 30 and 60 days prior to the date of application for benefits or between application and certification, the State agency must provide the individual with a notice of adverse action as specified in § 273.13 within 10 days after the determination of a quit or reduction in work effort. The notification must contain the particular act of noncompliance committed, the proposed period of ineligibility, the actions that may be taken to avoid the disqualification, and it must specify that the individual, if otherwise eligible, may resume participation at the end of the disqualification period if the State agency determines the individual to be in compliance with Program work requirements. The individual will be disqualified according to the State agency's established minimum mandatory sanction schedule. The ineligible individual must be considered an ineligible household member, pursuant to § 273.1(b)(7). The disqualification period will begin the first month following the expiration of the 10-day adverse notice period, unless the individual requests a fair hearing. If a voluntary quit or reduction in work effort occurs in the last month of a certification period, or is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period, beginning with the day after the last certification period ends and continuing for the length of the disqualification, regardless of whether the individual reapplies for food stamps. Each individual has a right to a fair hearing to appeal a denial or termination of benefits due to a determination that the individual voluntarily quit his or her job or reduced his or her work effort without good cause. If the participating individual's benefits are continued pending a fair hearing and the State agency determination is upheld, the

disqualification period must begin the first of the month after the hearing decision is rendered.

(viii) If the individual who voluntarily quit his or her job, or who reduced his or her work effort without good cause is the head of a household, as defined in § 273.1(d), the State agency, at its option, may disqualify the entire household from Food Stamp Program participation in accordance with paragraph (f)(5) of this section.

(4) *Ending a voluntary quit or a reduction in work disqualification.* Except in cases of permanent disqualification, following the end of the mandatory disqualification period for voluntarily quitting a job or reducing work effort without good cause, an individual may begin participation in the program if he or she reapplies and is determined eligible by the State agency. Eligibility may be reestablished during a disqualification and the individual, if otherwise eligible, may be permitted to resume participation if the individual becomes exempt from Program work requirements under paragraph (b)(1) of this section.

(5) *Application in the final month of disqualification.* Except in cases of permanent disqualification, if an application for participation in the Program is filed in the final month of the mandatory disqualification period, the State agency must, in accordance with § 273.10(a)(3), use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

(k) *Employment initiatives program.* (1) *General.* In accordance with section 17(d)(1)(B) of the Food Stamp Act, qualified State agencies may elect to operate an employment initiatives program, in which an eligible household can receive the cash equivalent of its food stamp coupon allotment.

(2) *State agency qualification.* A State agency qualifies to operate an employment initiatives program if, during the summer of 1993, at least half of its food stamp households also received cash benefits from a State program funded under title IV-A of the Social Security Act.

(3) *Qualified State agencies.* The State agencies of Alaska, California, Connecticut, the District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, West Virginia, and Wisconsin meet the qualification. These 10 State agencies may operate an employment initiatives program.

(4) *Eligible households.* A food stamp household in one of the 10 qualified State agencies may receive cash benefits

in lieu of a food stamp coupon allotment if it meets the following requirements:

(i) The food stamp household elects to participate in an employment initiatives program;

(ii) An adult member of the household:

(A) Has worked in unsubsidized employment for the last 90 days, earning a minimum of \$350 per month;

(B) Is receiving cash benefits under a State program funded under title IV–A of the Social Security Act; or

(C) Was receiving cash benefits under the State program but, while participating in the employment initiatives program, became ineligible because of earnings and continues to earn at least \$350 a month from unsubsidized employment.

(5) *Program Provisions.* (i) Cash benefits provided in an employment initiatives program will be considered an allotment, as defined at § 271.2 of this chapter.

(ii) An eligible household receiving cash benefits in an employment initiatives program will not receive any other food stamp benefit during the period for which cash assistance is provided.

(iii) A qualified State agency operating an employment initiatives program must increase the cash benefit to participating households to compensate for any State or local sales tax on food purchases, unless FNS determines that an increase is unnecessary because of the limited nature of items subject to the State or local sales tax.

(iv) Any increase in cash assistance to account for a State or local sales tax on food purchases must be paid by the State agency.

(6) *Evaluation.* After two years of operating an employment initiatives program, a State agency must evaluate the impact of providing cash assistance in lieu of a food stamp coupon allotment to participating households. The State agency must provide FNS with a written report of its evaluation findings. The State agency, with the concurrence of FNS, will determine the content of the evaluation.

(l) *Work supplementation program.* In accordance with section 16(b) of the Food Stamp Act, States may operate work supplementation (or support) programs that allow the cash value of food stamp benefits and public assistance, such as cash assistance authorized under title IV–A of the Social Security Act or cash assistance under a program established by a State, to be provided to employers as a wage subsidy to be used for hiring and

employing public assistance recipients. The goal of these programs is to promote self-sufficiency by providing public assistance recipients with work experience to help them move into unsubsidized jobs. In accordance with § 272.2(d)(1)(xiv) of this chapter, State agencies that wish to exercise their option to implement work supplementation programs must submit to FNS for approval a plan that complies with the provisions of this paragraph (l). Work supplementation programs may not be implemented without prior approval from FNS.

(1) *Plan.* (i) *Assurances.* The plan must contain the following assurances:

(A) The individual participating in a work supplementation program must not be employed by the employer at the time the individual enters the program;

(B) The wage subsidy received under the work supplementation program must be excluded from household income and resources during the term the individual is participating in work supplementation;

(C) The household must not receive a separate food stamp allotment while participating in the work supplementation program;

(D) An individual participating in a work supplementation program is excused from meeting any other work requirements;

(E) The work supplementation program must not displace any persons currently employed who are not supplemented or supported;

(F) The wage subsidy must not be considered income or resources under any Federal, State or local laws, including but not limited to, laws relating to taxation, welfare, or public assistance programs, and the household's food stamp allotment must not be decreased due to taxation or any other reason because of its use as a wage subsidy;

(G) The earned income deduction does not apply to the subsidized portion of wages received in a work supplementation program; and

(H) All work supplemented or supported employees must receive the same benefits (sick and personal leave, health coverage, workmen's compensation, etc.) as similarly situated coworkers who are not participating in work supplementation and wages paid under a wage supplementation or support program must meet the requirements of the Fair Labor Standards Act and other applicable employment laws.

(ii) *Description.* The plan must also describe:

(A) The procedures the State agency will use to ensure that the cash value of

food stamp benefits for participating households are not subject to State or local sales taxes on food purchases. The costs of increasing household food stamp allotments to compensate for such sales taxes must be paid from State funds;

(B) State agency, employer and recipient obligations and responsibilities;

(C) The procedures the State agency will use to provide wage subsidies to employers and to ensure accountability;

(D) How public assistance recipients in the proposed work supplementation program will, within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported;

(E) Whether the food stamp allotment and public assistance grant will be frozen at the time a recipient begins a subsidized job; and

(F) The procedures the State agency will use to ensure that work supplementation program participants do not incur any Federal, State, or local tax liabilities on the cash value of their food stamp benefits.

(2) *Budget.* In addition to the plan described in paragraph (l)(1) of this section, an operating budget for the proposed work supplementation program must be submitted to FNS.

(3) *Approval.* FNS will review the initial plan and any subsequent amendments. Upon approval by FNS, the State agency must incorporate the approved work supplementation program plan or subsequent amendment into its State Plan of Operation and its operating budget must be included in the State agency budget. No plan or amendment may be implemented without approval from FNS.

(4) *Reporting.* State agencies operating work supplementation and support programs are required to comply with all FNS reporting requirements, including reporting the amount of benefits contributed to employers as a wage subsidy on the FNS–388, State Issuance and Participation Estimates; FNS–388A, Participation and Issuance by Project Area; FNS–46, Issuance Reconciliation Report; and SF–269, Addendum Financial Status Report. State agencies are also required to report administrative costs associated with work supplementation programs on the FNS–366A, Budget Projection and SF–269, Financial Status Report. Special codes for work supplementation programs will be assigned for reporting purposes.

(5) *Funding.* FNS will pay the cash value of a participating household's food stamp benefits to a State agency

with an approved work supplementation program to pay to an employer as a wage subsidy, and will also reimburse the State agency for related administrative costs, in accordance with Section 16 of the Food Stamp Act.

(6) *Quality control.* Cases in which a household member is participating in a work supplementation program will be coded as not subject to review.

(m) *Optional workfare program.* (1) *General.* This paragraph (m) contains the rules to be followed in operating a food stamp workfare program. In workfare, nonexempt food stamp recipients may be required to perform work in a public service capacity as a condition of eligibility to receive the coupon allotment to which their household is normally entitled. The primary goal of workfare is to improve employability and enable individuals to move into regular employment.

(2) *Program administration.* (i) A food stamp workfare program may be operated as a component of a State agency's E&T program, or it may be operated independently. If the workfare program is part of an E&T program it must be included as a component in the State agency's E&T plan in accordance with the requirements of paragraph (c)(4) of this section. If it is operated independent of the E&T program, the State agency must submit a workfare plan to FNS for its approval. For the purpose of this paragraph (m), a political subdivision is any local government, including, but not limited to, any county, city, town or parish. A State agency may implement a workfare program statewide or in only some areas of the State. The areas of operation must be identified in the State agency's workfare or E&T plan.

(ii) Political subdivisions are encouraged, but not required, to submit their plans to FNS through their respective State agencies. At a minimum, however, plans must be submitted to the State agencies concurrent with their submission to FNS. Workfare plans and subsequent amendments must not be implemented prior to their approval by FNS.

(iii) When a State agency chooses to sponsor a workfare program by submitting a plan to FNS, it must incorporate the approved plan into its State Plan of Operations. When a political subdivision chooses to sponsor a workfare program by submitting a plan to FNS, the State agency is responsible as a facilitator in the administration of the program by disbursing Federal funding and meeting the requirements identified in paragraph (m)(4) of this section. When it is notified that FNS has

approved a workfare plan submitted by a political subdivision in its State, the State agency must append that political subdivision's workfare plan to its own State Plan of Operations.

(iv) The operating agency is the administrative organization identified in the workfare plan as being responsible for establishing job sites, assigning eligible recipients to the job sites, and meeting the requirements of this paragraph (m). The operating agency may be any public or private, nonprofit organization. The State agency or political subdivision that submitted the workfare plan is responsible for monitoring the operating agency's compliance with the requirements of this paragraph (m) or of the workfare plan. The Department may suspend or terminate some or all workfare program funding, or withdraw approval of the workfare program from the State agency or political subdivision that submitted the workfare plan upon finding that that State agency or political subdivision, or their respective operating agencies, have failed to comply with the requirements of this paragraph (m) or of the workfare plan.

(v) State agencies or other political subdivisions must describe in detail in the plan how the political subdivision, working with the State agency and any other cooperating agencies that may be involved in the program, will fulfill the provisions of this paragraph (m). The plan will be a one-time submittal, with amendments submitted as needed to cover any changes in the workfare program as they occur.

(vi) State agencies or political subdivisions submitting a workfare plan must submit with the plan an operating budget covering the period from the initiation of the workfare program's implementation schedule to the close of the Federal fiscal year. In addition, an estimate of the cost for one full year of operation must be submitted together with the workfare plan. For subsequent fiscal years, the workfare program budget must be included in the State agency's budget.

(vii) If workfare plans are submitted by more than one political subdivision, each representing the same population (such as a city within a county), the Department will determine which political subdivision will have its plan approved. Under no circumstances will a food stamp recipient be subject to more than one food stamp workfare program. If a political subdivision chooses to operate a workfare program and represents a population which is already, at least in part, subject to a food stamp workfare program administered by another political subdivision, it must

establish in its workfare plan how food stamp recipients will not be subject to more than one food stamp workfare program.

(3) *Operating agency responsibilities.*

(i) *General.* The operating agency, as designated by the State agency or other political subdivision that submits a plan, is responsible for establishing and monitoring job sites, interviewing and assessing eligible recipients, assigning eligible recipients to appropriate job sites, monitoring participant compliance, making initial determinations of good cause for household noncompliance, and otherwise meeting the requirements of this paragraph (m).

(ii) *Establishment of job sites.* Workfare job slots may only be located in public or private nonprofit agencies. Contractual agreements must be established between the operating agency and organizations providing jobs that include, but are not limited to, designation of the slots available and designation of responsibility for provision of benefits, if any are required, to the workfare participant.

(iii) *Notifying State agency of noncompliance.* The operating agency must notify the State agency of noncompliance by an individual with a workfare obligation when it determines that the individual did not have good cause for the noncompliance. This notification must occur within five days of such a determination so that the State agency can make a final determination as provided in paragraph (m)(4)(iv) of this section.

(iv) *Notifications.* (A) State agencies must establish and use notices to notify the operating agency of workfare-eligible households. The notice must include the case name, case number, names of workfare-eligible household members, address of the household, certification period, and indication of any part-time work. If the State agency is calculating the hours of obligation, it must also include this in the notice. If the operating agency is computing the hours to be worked, include the monthly allotment amount.

(B) Operating agencies must establish and use notices to notify the workfare participant of where and when the participant is to report, to whom the participant is to report, a brief description of duties for the particular placement, and the number of hours to be worked.

(C) Operating agencies must establish and use notices to notify the State agency of failure by a household to meet its workfare obligation.

(v) *Recordkeeping requirements.* (A) Files that record activity by workfare

participants must be maintained. At a minimum, these records must contain job sites, hours assigned, and hours completed.

(B) Program records must be maintained, for audit and review purposes, for a period of 3 years from the month of origin of each record. Fiscal records and accountable documents must be retained for 3 years from the date of fiscal or administrative closure of the workfare program. Fiscal closure, as used in this paragraph (m), means that workfare program obligations for or against the Federal government have been liquidated. Administrative closure, as used in this paragraph (m), means that the operating agency or Federal government has determined and documented that no further action to liquidate the workfare program obligation is appropriate. Fiscal records and accountable records must be kept in a manner that will permit verification of direct monthly reimbursements to recipients, in accordance with paragraph (m)(7)(iii) of this section.

(vi) *Reporting requirements.* The operating agency is responsible for providing information needed by the State agency to fulfill the reporting requirements contained in paragraph (m)(4)(v) of this section.

(vii) *Disclosure.* The provisions of § 272.1(c) of this chapter restricting the use and disclosure of information obtained from food stamp households is applicable to the administration of the workfare program.

(4) *State agency responsibilities.* (i) If a political subdivision chooses to operate a workfare program, the State agency must cooperate with the political subdivision in developing a plan.

(ii) The State agency must determine at certification or recertification which household members are eligible for the workfare program and inform the household representative of the nature of the program and of the penalties for noncompliance. If the State agency is not the operating agency, each member of a household who is subject to workfare under paragraph (m)(5)(i) of this section must be referred to the organization which is the operating agency. The information identified in paragraph (m)(3)(iv)(A) of this section must be forwarded to the operating agency within 5 days after the date of household certification. Computation of hours to be worked may be delegated to the operating agency.

(iii) The State agency must inform the household and the operating agency of the effect of any changes in a household's circumstances on the household's workfare obligation. This

includes changes in benefit levels or workfare eligibility.

(iv) Upon notification by the operating agency that a participant has failed to comply with the workfare requirement without good cause, the State agency must make a final determination as to whether or not the failure occurred and whether there was good cause for the failure. If the State agency determines that the participant did not have good cause for noncompliance, a sanction must be processed as provided in paragraphs (f)(1)(i) and (f)(1)(ii) of this section. The State agency must immediately inform the operating agency of the months during which the sanction will apply.

(v) The State agency must submit quarterly reports to FNS within 45 days of the end of each quarter identifying for that quarter for that State:

(A) The number of households with workfare-eligible recipients referred to the operating agency. A household will be counted each time it is referred to the operating agency;

(B) The number of households assigned to jobs each month by the operating agency;

(C) The number of individuals assigned to jobs each month by the operating agency;

(D) The total number of hours worked by participants; and

(E) The number of individuals against which sanctions were applied. An individual being sanctioned over two quarters should only be reported as sanctioned for the earlier quarter.

(vi) The State agency may, at its option, assume responsibility for monitoring all workfare programs in its State to assure that there is compliance with this section and with the plan submitted and approved by FNS. Should the State agency assume this responsibility, it would act as agent for FNS, which is ultimately responsible for ensuring such compliance. Should the State agency determine that noncompliance exists, it may withhold funding until compliance is achieved or FNS directs otherwise.

(5) *Household responsibilities.* (i) *Participation requirement.* Participation in workfare, if assigned by the State agency, is a Food Stamp Program work requirement for all nonexempt household members, as provided in paragraph (a) of this section. In addition:

(A) Those recipients exempt from Food Stamp Program work requirements because they are subject to and complying with any work requirement under title IV of the Social Security Act are subject to workfare if they are currently involved less than 20 hours a

week in title IV work activities. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision; and

(B) Those recipients exempt from Food Stamp Program work requirements because they have applied for or are receiving unemployment compensation are subject to workfare.

(ii) *Household obligation.* The maximum total number of hours of work required of a household each month is determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month.

(6) *Other program requirements.* (i) *Conditions of employment.* (A) A participant may be required to work a maximum of 30 hours per week. This maximum must take into account hours worked in any other compensated capacity (including hours of participation in a title IV work program) by the participant on a regular or predictable part-time basis. With the participant's consent, the hours to be worked may be scheduled in such a manner that more than 30 hours are worked in one week, as long as the total for that month does not exceed the weekly average of 30 hours.

(B) No participant will be required to work more than eight hours on any given day without his or her consent.

(C) No participant will be required to accept an offer of workfare employment if it fails to meet the criteria established in paragraphs (h)(1)(iii), (h)(1)(iv), (h)(2)(i), (h)(2)(ii), (h)(2)(iv), and (h)(2)(v) of this section.

(D) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements; other Food Stamp Program work requirements established in paragraph (a)(1) of this section; or the job search requirements established in paragraph (e)(1)(i) of this section, that inability must not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency must, if possible, reschedule the missed activity. If the rescheduling cannot be completed before the end of the month, that must not be considered as cause for disqualification.

(E) The operating agency must assure that all persons employed in workfare jobs receive job-related benefits at the

same levels and to the same extent as similar non-workfare employees. These are benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit that requires a cash contribution by the participant will be optional at the discretion of the participant.

(F) The operating agency must assure that all workfare participants experience the same working conditions that are provided to non-workfare employees similarly employed.

(G) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Public Law 89-286), relating to health and safety conditions, apply to the workfare program.

(H) Operating agencies must not place a workfare participant in a work position that has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies due to hiring freezes, terminations, or lay-offs must not be filled by workfare participants unless it can be demonstrated that the vacancies are a result of insufficient funds to sustain former staff levels.

(I) Workfare jobs must not, in any way, infringe upon the promotional opportunities that would otherwise be available to regular employees.

(J) Workfare jobs must not be related in any way to political or partisan activities.

(K) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (m)(7) of this section. However, whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site). The Department does not assume liability for any injury to or death of a workfare participant while on the job.

(L) The nondiscrimination requirement provided in § 272.6(a) of this chapter applies to all agencies involved in the workfare program.

(ii) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements

beyond those required under this section during this time.

(iii) *Participant reimbursement.* The operating agency must reimburse participants for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs may not include the cost of meals away from home. No participant cost reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program may be reimbursed under the food stamp workfare program. Only reimbursement of participant costs up to but not in excess of \$25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (m)(7) of this section. Reimbursed child care costs may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. In accordance with paragraph (m)(4)(i) of this section, a State agency may decide what its reimbursement policy shall be.

(iv) *Failure to comply.* When a workfare participant is determined by the State agency to have failed or refused without good cause to comply with the requirements of this paragraph (m), the provisions of paragraph (f) of this section will apply.

(v) *Benefit overissuances.* If a benefit overissuance is discovered for a month or months in which a participant has already performed a workfare or work component requirement, the State agency must apply the claim recovery procedures as follows:

(A) If the person who performed the work is still subject to a work obligation, the State must determine how many extra hours were worked because of the improper benefit. The participant should be credited those extra hours toward future work obligations; and

(B) If a workfare or work component requirement does not continue, the State agency must determine whether the overissuance was the result of an intentional program violation, an inadvertent household error, or a State agency error. For an intentional program violation a claim should be established for the entire amount of the overissuance. If the overissuance was caused by an inadvertent household error or State agency error, the State agency must determine whether the number of hours worked in workfare are more than the number which could have been assigned had the proper

benefit level been used in calculating the number of hours to work. A claim must be established for the amount of the overissuance not "worked off," if any. If the hours worked equal the amount of hours calculated by dividing the overissuance by the minimum wage, no claim will be established. No credit for future work requirements will be given.

(7) *Federal financial participation—(i) Administrative costs.* Fifty percent of all administrative costs incurred by State agencies or political subdivisions in operating a workfare program will be funded by the Federal government. Such costs include those related to recipient participation in workfare, up to \$25 per month for any participant, as indicated in paragraph (m)(6)(iii) of this section. Such costs do not include the costs of equipment, capital expenditures, tools or materials used in connection with the work performed by workfare participants, the costs of supervising workfare participants, the costs of reimbursing participants for meals away from home, or reimbursed expenses in excess of \$25 per month for any participant. State agencies must not use any portion of their annual 100 percent Federal E&T allocations to fund the administration of optional workfare programs under section 20 of the Food Stamp Act and this paragraph (m).

(ii) *Funding mechanism.* The State agencies have responsibility for disbursing Federal funds used for the workfare program through the State agencies' Letters of Credit. The State agency must also assure that records are being maintained which support the financial claims being made to FNS. This will be for all programs, regardless of who submits the plan. Mechanisms for funding local political subdivisions which have submitted plans must be established by the State agencies.

(iii) *Fiscal recordkeeping and reporting requirements.* Workfare-related costs must be identified by the State agency on the Financial Status Report (Form SF-269) as a separate column. All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to workfare program funds must be maintained in accordance with § 277.12 of this chapter.

(iv) *Sharing workfare savings—(A) Entitlement.* A political subdivision is entitled to share in the benefit reductions that occur when a workfare participant begins employment while participating in workfare for the first time, or within thirty days of ending the first participation in workfare.



(1) To begin employment means to appear at the place of employment and to begin working.

(2) First participation in workfare means performing work for the first time in a particular workfare program. The only break in participation that does not end the first participation will be due to the participant's taking a job which does not affect the household's allotment by an entire month's wages and which is followed by a return to workfare.

(B) *Calculating the benefit reductions.* The political subdivision will calculate benefit reductions from each workfare participant's employment as follows.

(1) Unless the political subdivision knows otherwise, it will presume that the benefit reduction equals the difference between the last allotment issued before the participant began the new employment and the first allotment that reflects a full month's wages, earned income deduction, and dependent care deduction attributable to the new job.

(2) If the political subdivision knows of other changes besides the new job that affect the household's allotment after the new job began, the political subdivision will obtain the first allotment affected by an entire month's wages from the new job. The political subdivision will then recalculate the allotment to account for the wages, earned income deduction, and dependent care deduction attributable to the new job. In recalculating the allotment the political subdivision will also replace any benefits from a State program funded under title IV-A of the Social Security Act received after the new job with benefits received in the last month before the new job began. The difference between the first allotment that accounts for the new job and the recalculated allotment will be the benefit reduction.

(3) The political subdivision's share of the benefit reduction is three times this difference, divided by two.

(4) If, during these procedures, an error is discovered in the last allotment issued before the new employment began, that allotment must be corrected before the savings are calculated.

(C) *Accounting.* The reimbursement from workfare will be reported and paid as follows:

(1) The political subdivision will report its enhanced reimbursement to the State agency in accordance with paragraph (m)(7)(iii) of this section.

(2) The Food and Nutrition Service will reimburse the political subdivision in accordance with paragraph (m)(7)(ii) of this section.

(3) The political subdivision will, upon request, make available for review

sufficient documentation to justify the amount of the enhanced reimbursement.

(4) The Food and Nutrition Service will reimburse only the political subdivision's reimbursed administrative costs in the fiscal year in which the workfare participant began new employment and which are acceptable according to paragraph (m)(7)(i) of this section.

(8) *Voluntary workfare program.* State agencies and political subdivisions may operate workfare programs whereby participation by food stamp recipients is voluntary. In such a program, the penalties for failure to comply, as provided in paragraph (f) of this section, will not apply for noncompliance. The amount of hours to be worked will be negotiated between the household and the operating agency, though not to exceed the limits provided under paragraph (m)(5)(ii) of this section. In addition, all protections provided under paragraph (m)(6)(i) of this section shall continue to apply. Those State agencies and political subdivisions choosing to operate such a program shall indicate in their workfare plan how their staffing will adapt to anticipated and unanticipated levels of participation. The Department will not approve plans which do not show that the benefits of the workfare program, in terms of hours worked by participants and reduced food stamp allotments due to successful job attainment, are expected to exceed the costs of such a program. In addition, if the Department finds that an approved voluntary program does not meet this criterion, the Department reserves the right to withdraw approval.

(9) *Comparable workfare programs.* In accordance with section 6(o)(2)(C) of the Food Stamp Act, State agencies and political subdivisions may establish programs comparable to workfare under this paragraph (m) for the purpose of providing ABAWDs subject to the time limits specified at § 273.24 a means of fulfilling the work requirements in order to remain eligible for food stamps. While comparable to workfare in that they require the participant to work for his or her household's food stamp allotment, these programs may or may not conform to other workfare requirements. State agencies or political subdivisions desiring to operate a comparable workfare program must meet the following conditions:

(i) The maximum number of hours worked weekly in a comparable workfare activity, combined with any other hours worked during the week by a participant for compensation (in cash or in kind) in any other capacity, must not exceed 30;

(ii) Participants must not receive a fourth month of food stamp benefits (the first month for which they would not be eligible under the time limit) without having secured a workfare position or without having met their workfare obligation. Participation must be verified timely to prevent issuance of a month's benefits for which the required work obligation is not met;

(iii) The State agency or political subdivision must maintain records to support the issuance of benefits to comparable workfare participants beyond the third month of eligibility; and

(iv) The State agency or political subdivision must provide a description of its program, including a methodology for ensuring compliance with (m)(9)(ii) of this section. The description should be submitted to the appropriate Regional office, with copies forwarded to the Food Stamp Program National office.

**§ 273.9 [AMENDED]**

9. In § 273.9:

a. Paragraph (c)(5)(i)(A) is amended by removing the reference to “§ 273.7(d)(1)(ii)” and adding in its place a reference to “§ 273.7(d)(3)”.

b. Paragraph (c)(5)(i)(F) is amended by removing the reference to “§ 273.7(d)(1)(ii)” and adding in its place a reference to “§ 273.7(d)(3)”.

c. Paragraph (c)(14) is amended by removing the references to “§ 273.7(d)(1)(ii)” and “§ 273.7(d)(1)(ii)(A)” and adding in their place reference to “§ 273.7(d)(3)” and “§ 273.7(d)(3)(i)” respectively.

d. Paragraph (d)(4) is amended by removing the reference to “§ 273.7(f)” and adding in its place a reference to “§ 273.7(e)”.

**§ 273.22 [Removed and Reserved]**

10. Remove and reserve § 273.22.

11. In § 273.24:

a. Paragraphs (a)(5) and (a)(6) are removed.

b. Paragraph (b)(8) is removed.

c. Paragraph (c) heading and introductory text are revised.

d. Paragraphs (g), (h), (i), and (j) are revised.

The revisions read as follows:

**§ 273.24 Time limit for able-bodied adults.**

\* \* \* \* \*

(c) *Exceptions.* The time limit does not apply to an individual if he or she is: \* \* \*

\* \* \* \* \*

(g) *15 percent exemptions.* (1) For the purpose of establishing the 15 percent exemption for each State agency, the following terms are defined:

(i) *Caseload* means the average monthly number of individuals receiving food stamps during the 12-month period ending the preceding June 30.

(ii) *Covered individual* means a food stamp recipient, or an applicant denied eligibility for benefits solely because he or she received food stamps during the 3 months of eligibility provided under paragraph (b) of this section, who:

(A) Is not exempt from the time limit under paragraph (c) of this section;

(B) Does not reside in an area covered by a waiver granted under paragraph (f) of this section;

(C) Is not fulfilling the work requirements as defined in paragraph (a)(1) of this section; and

(D) Is not receiving food stamp benefits under paragraph (e) of this section.

(2) Subject to paragraphs (h) and (i) of this section, a State agency may provide an exemption from the 3-month time limit of paragraph (b) of this section for covered individuals. Exemptions do not count towards a State agency's allocation if they are provided to an individual who is otherwise exempt from the time limit during that month.

(3) For each fiscal year, a State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State, as estimated by FNS, based on FY 1996 quality control data and other factors FNS deems appropriate, and adjusted by FNS to reflect changes in:

(i) The State agency's caseload; and

(ii) FNS's estimate of changes in the proportion of food stamp recipients covered by waivers granted under paragraph (f) of this section.

(4) State agencies must not discriminate against any covered individual for reasons of age, race, color, sex, disability, religious creed, national origin, or political beliefs. Such discrimination is prohibited by this part, the Food Stamp Act, the Age Discrimination Act of 1975 (Public Law 94-135), the Rehabilitation Act of 1973 (Public Law 93-112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints will be processed in accord with 7 CFR part 15.

(h) *Adjustments*. FNS will make adjustments as follows:

(1) *Caseload adjustments*. FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(2) of this section during a fiscal year if the number of food stamp recipients in the State varies from the

State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments*. During each fiscal year, FNS will adjust the number of exemptions allocated to a State agency based on the number of exemptions in effect in the State for the preceding fiscal year.

(i) If the State agency does not use all of its exemptions by the end of the fiscal year, FNS will increase the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the remaining balance.

(ii) If the State agency exceeds its exemptions by the end of the fiscal year, FNS will reduce the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the corresponding number.

(i) *Reporting requirement*. The State agency will track the number of exemptions used each month and report this number to the regional office on a quarterly basis as an addendum to the quarterly Employment and Training Report (Form FNS-583) required by § 273.7(c)(8).

(j) *Other Program rules*. Nothing in this section will make an individual eligible for food stamp benefits if the individual is not otherwise eligible for benefits under the other provisions of this part and the Food Stamp Act.

#### **PART 275—PERFORMANCE REPORTING SYSTEM**

12. In § 275.12, paragraph (d)(1) is amended by removing the reference to “§ 273.7(g)” and adding in its place a reference to “§ 273.7(f).”

#### **PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES**

13. In § 277.4, paragraph (b)(8) is amended by removing the reference to “§ 273.7(f)” and adding in its place a reference to “§ 273.7(d).”

Dated: June 7, 2002.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition and Consumer Services.*

[FR Doc. 02-15294 Filed 6-18-02; 8:45 am]

**BILLING CODE 3410-30-P**

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Part 28**

[Docket No. 02-10]

RIN 1557-AC05

#### **International Banking Activities: Capital Equivalency Deposits**

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Final rule.

**SUMMARY:** The OCC is amending its regulation regarding the capital equivalency deposits (CED) that foreign banks with Federal branches or agencies must establish and maintain. The OCC is revising certain requirements regarding CED deposit arrangements to increase flexibility for, and reduce burden on, certain Federal branches and agencies, based on a supervisory assessment of the risks presented by the particular institution.

**EFFECTIVE DATE:** This rule is effective on June 19, 2002.

#### **FOR FURTHER INFORMATION CONTACT:**

Martha Clarke, Acting Assistant Director, Legislative and Regulatory Activities Division, 202-874-5090; or Carlos Hernandez, Senior International Advisor, International Banking and Finance Division, 202-874-4730.

#### **SUPPLEMENTARY INFORMATION:**

On January 30, 2002, the OCC requested comment on an interim rule amending part 28. 67 FR 4325. The interim rule revised certain requirements regarding CED deposit arrangements to increase flexibility and reduce burden by permitting the OCC to impose deposit requirements based on the same supervision by risk approach that it uses in its supervision of national banks. The interim rule revised 12 CFR 28.15(d) to clarify that the OCC may vary the terms of a CED Agreement (Agreement) based on the circumstances and supervisory risks present at a particular branch or agency. For example, an Agreement may permit a foreign bank to withdraw assets from its CED account, thereby reducing the net value of the assets held in the account without OCC approval, as long as the withdrawal does not reduce the value below the minimum CED level required for that institution. Moreover, it may not be necessary in all cases for a foreign bank to pledge its CED assets to the OCC or for the depository bank to be a signatory to the Agreement unless required by the OCC. The OCC stated that it will make these determinations on a case-by-case basis,